Accountancy

ESTABLISHED 1889

Takeover Bids

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The Cohen Report

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Surtax and Companies

THE JOURNAL OF
THE INSTITUTE OF CHARTERED ACCOUNTANTS
IN ENGLAND AND WALES

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The Institute of Chartered Accountants
in England and Wales

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Accountancy

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Professional Notes

Automation in Motion

AUTOMATION SEEMS TO be coming into the office faster than many observers have anticipated. The first systematic inquiry to be undertaken sums it up so:

> Within the next four or five years nearly all the major employers of clerical staff, including the distributive trades, banks, insurance companies, hospital boards and local and central government, expect to be using digital computers. Industrialists who expected to use computers for office work in the next five years include iron and steel firms, the oil companies, the nationalised industries, aircraft constructors and various large engineering firms including electrical engineers, scientific instrument makers, cable makers, pump manufacturers, cycle and motor-cycle manufacturers, excavator makers and manufacturers of bearings.

As would be expected, the concerns planning to install digital computers in their offices, or expressing an interest in the prospect, were mostly the large ones. Yet one manufacturer of "an automatic office" selling at around £100,000 claimed that one could be economically installed by any business with a clerical staff of more than 400, provided the office work could be centralised.

The prices of computers ranged from £35,000 to £500,000 and the smallest annual rent mentioned was £4,000. Collective purchase or hiring of a computer by several concerns in the same area was suggested.

Most of the businesses taking part in the inquiry expected that automation in the office would give sizeable savings in unskilled clerical labour; the resulting level of skill would on average be higher and more responsibility would fall on the senior staff. One concern said that only some shift working in its office would

justify its buying a computer. There was almost universal agreement that programmers would be in gravely short supply.

The survey was made by the Board of Trade and the results appear in the *Board of Trade Journal* for February 14.

Accounting in and for Management

WE WROTE IN our last issue (see page 51) on two conferences on management accounting recently held in London and Chester, but were able to refer only briefly to the Chester conference, about which we now have a fuller report.

The conference, which was a week-end residential one, was arranged by the Merseyside Productivity Association, in conjunction with the Liverpool Society of Chartered Accountants. The President of the Liverpool Society, Mr. Cecil C. Taylor, F.C.A., took the chair throughout.

Mr. V. R. Anderson, A.C.A., speaking on the purpose of management accounting, said that accountants could help remove some of the distrust which patently existed between those whose job it was to do the managing and those whose job it was just "to do". Accountants, also, had a duty to make businessmen aware of how accounting could assist in planning, in measuring and interpreting results, and in using records of the past to probe the future.

Mr. E. H. Davison, A.C.A., read a paper on the use of accounting ratios. Managers, in general, he said, were receiving and attempting to digest more figures than were necessary for their purpose—selection of the right figures to contribute to good management was, therefore, essential. Concentration upon figures reflecting only the performance of the particular business was not enough. There should be comparison with significant figures in business generally or in particular industries and trades, enabling internal standards to be set on reliable data and bringing to light weaknesses of the business, thus stimulating better performance. A number of papers recently published on accounting ratios deserved close attention, particularly those which provided simple rules for the preparation and consideration of comparative accounting data.

Mr. R. Warwick Dobson, C.A., F.C.W.A., speaking on figures for cost production, said that one of the most usual faults in business was the accumulation of surplus stocks. This fault was to be avoided only by fixing minimum and maximum levels of stock for all items of materials, by way of budgets based on a planned production programme in which the sales department must share full responsibility. Reports by accountants to managers should show the incidence and extent of losses of material in storage, handling, processing and delivery, so that inspection and control could be strengthened.

In order that expenditure on materials, labour, supplied services and fixed assets could be controlled, accountants must provide figures on labour turnover (important because of the high cost of training new personnel); absenteeism; maintenance costs of machinery on a comparative basis over long periods; machine utilisation (sampling techniques being used in analysing the causes of idle machine time); the turnover ratio of each category of working capital; the cost of credit allowed and stocks carried.

In a paper on management accounting in medium-sized businesses, Mr. B. A. Maynard, M.A., F.C.A., A.C.W.A., affirmed that many such concerns now found themselves beset with difficulties in bringing about the necessary flow of basic information, difficulties stemming from deficiencies in accounting procedures or accounting staff.

Those in charge of medium-sized businesses were often surprised at what improvements in organisation emerged simply as by-products of the introduction of budgetary control.

Frequently, it was such factors as a critical shortage of cash, a sudden period of loss, difficulties with the Inland Revenue in agreeing the valuation of stock or work-in-progress, the retirement of the founder of the business, or merely the desire to "keep up with the Joneses," that caused businesses to adopt modern systems of management accounting. But however negative might be the reasons for installing these systems, progress resulted.

Decay of Stockjobbing

SUGGESTIONS THAT ALL is not well with the system of jobbing, as practised on the London Stock Exchange, have been not uncommon in recent years, but it is an event for reforms to be promulgated by a jobber. A memorandum has been issued by the senior partner of a jobbing firm, a member of almost forty years standing who sits on the Council of the Exchange, suggesting that the alternatives to radical changes are the breakdown of the system or the creation of only a few jobbing firms.

One suggestion is that Rule 88, which lays down the conditions under which brokers may deal with clients otherwise than through the medium of a sale or purchase to or from a jobber, should be scrapped and that there should be substituted a straightforward instruction that all business coming to brokers must be done through jobbers. A new Rule is suggested to check the tendency of firms suddenly to start dealing in new groups of securities. An exception is made of jobbing in the gilt-edged market, in which conditions are considered to be much more reasonable.

There is doubtless something to be said for both the suggestions. The fact that some broking firms, when marrying business from their own clients, invariably put the business through an appropriate jobber, suggests that there is no fundamental reason why others should not do so. But it seems probable that the memorandum exaggerates the benefit likely to flow to jobbers from such a change, even if it does not exaggerate the extent to which business is done by brokers outside the House. Too often, one suspects, business between institutions is done without the co-operation of any member of the Exchange. As to the practice of firms suddenly joining a market which is exceptionally active, that does happen and it presumably makes

some difference to the business done by established members. But many broking firms would be slow to deal with a newcomer rather than their established connections—business would probably be transferred in volume only if the newcomer consistently gave more favourable terms.

The author of the memorandum believes that competition is now so fierce that most jobbers make little or no profit. A more usual view is that taxation is so high that sufficient reserves cannot be established in good years to get the jobber through the bad periods and to maintain his capital position. Most people who have considered the problem seem to reach the conclusion that, with taxation as it is today, there are too many small jobbers and that some degree of amalgamation (stopping well short of the creation of only a few large firms) is the best working solution of the problem, until such time as the volume of business greatly expands, whether because of a reduction in stamp duties or for other reasons.

The Resurgence of Personal Saving

IN THE FIRST nine months of last year people and firms saved about 11 per cent. of their incomes after tax. They were saving so strongly that one might almost imagine that the sober Victorian virtues of thrift and household economy had re-asserted themselves. However, there was not much moral revival about what the Treasury calls "the resurgence of personal saving." Much of the saving that people made was contractual—"enforced" through life assurances and pension schemes. In 1956–57 much was imposed by hire purchase restrictions, which caused commitments to be paid off faster than new ones were entered into. Some of the saving was the response to higher rates of interest.

Further, a large part of the "personal saving" was made not by individuals, but by unincorporated businesses, being profits ploughed back. (A defect of the British statistics is that in saving, as in some other economic magnitudes, the truly personal element cannot be distinguished from that of firms.)

Between 1948 and 1951, personal saving was only 2 per cent. or so of incomes after tax. The rate rose in 1952 and from then until 1954 was about 6.5 per cent. In 1955 it was 8 per cent, and in 1956, 10 per cent. The corresponding level in the United States has in recent years not exceeded 7 per cent. The comparison with our own personal saving before the last war is also very favourable: in 1938 the rate in the United Kingdom was only 6 per cent. Indeed, one would have to go back to before the First World War to find personal saving at anything like the present level in this country.

Of the total amount of saving in the United Kingdom in 1956, persons and firms accounted for about 40 per cent.—a dramatic increase compared with only a few years ago. In 1948–51, for example, the proportion was 10 per cent. In 1938, however, it was 56 per cent. At a time when there is much written and said about the self-financing of industry, it should be well noted that companies and corporations are now responsible for a smaller part of total saving than they were just after the war and just before it—in 1956, 49 per cent., compared with 61 per cent. in both 1948–51 and in 1938. Again, however, it must be remembered that saving by firms is lumped in the statistics with that by individuals.

One result of the enlargement of personal saving was that government saving through the Budget has declined in importance in recent years —to 12 per cent. of total saving in 1956, compared with 30 per cent, in 1948–51.

The statistics are given in the *Bulletin for Industry* for February, 1958, issued by the Information Division of the Treasury.

New Council Member of the Institute

WE HAVE PLEASURE in reporting that Mr. S. Dixon, M.A., A.C.A., has been elected a member of the Council of the Institute of Chartered Accountants in England and Wales.

Mr. Dixon, who was born in 1900, after being educated at Leeds Grammar School went with a classical scholarship to The Queen's College, Oxford, where he graduated in "Greats." He was articled to Mr. Henry D. Leather of Leather and Veale, Leeds. In 1926 he passed with honours the Intermediate examination of the Institute and in 1927 the Final, being awarded the Quilter Prize.

From 1927 to 1935, Mr. Dixon was with Leather and Veale (which amalgamated with Peat, Marwick, Mitchell and Co.). In 1935 he became secretary of *The Midland Tar Distillers, Ltd.*, and in 1943 a director.

Mr. Dixon has played an active part in the affairs of the Birmingham District Society of Chartered Accountants, of which he was President in 1955/56. Since 1950 he has been on the Birmingham and District Taxation and Research Committee and since 1951 on the Taxation and Research Committee of the Institute, becoming chairman last year.

"Buying a Shareholder's Vote"

A FAMILIAR REGULATION of the articles of association of a private company is to the effect that if a shareholder wishes to transfer or dispose of his shares he should offer them to other shareholders if they are willing to purchase them. "Articles of this kind, which had hitherto been regarded as valuable protection of the continuity of a private company, are not worth the paper upon which they are written," the Lord President of the Court of Session is recently reported as saying in litigation arising out of the desire of Mr. Hugh Fraser to obtain control of *Lyle and Scott, Ltd.*, the knitwear firm. A method of possible *de facto* control without transfer of shares was upheld by the Court.

It appears that certain shareholders of Lyle and Scott, Ltd., were paid £3 "for" each £1 share held by them. But this payment was not intended to lead to a transfer of the shares in the books of the company and did not in fact lead to a transfer. The particular regulation in the articles no doubt stood in the way of achieving the substantial objective of the offer and acceptance. The shareholders had bound themselves to vote as directed by the offeror. No intimation of any desire to transfer the shares was given to the company. The shareholders continued "as willing tools of Mr. Fraser," as the Lord President put it, and the com-

pany had no remedy by way of enforcement of the regulation in the articles which restricted the right of free disposal of the shares.

It is easy to criticise the device by saying that it is "buying a vote," with the implication that buying a vote is necessarily a dubious transaction. A better way of looking at it might be as an assignment of an equitable interest in property for value. In many circumstances shareholders are quite properly bound to vote according to the directions of the holder of the beneficial interest in the shares. A tightening-up of the articles would seem to be the best—perhaps the only—way of dealing with the situation.

Income Tax is Not a Debt

AN UNUSUAL CASE showing the difference between a tax liability and a trade debt was an appeal by a café proprietor against his conviction under Section 157 (1) of the Bankruptcy Act, 1914 (*Regina* v. *Vaccari*, *The Times* Newspaper, February 11, 1958).

By the sub-Section:

> any person who has been adjudged bankrupt . . . shall be guilty of a misdemeanour, if, having engaged in any trade or business, and having outstanding at the date of the receiving order any debts contracted in the course and for the purposes of such trade or business (*a*) he has within two years prior to the presentation of the bankruptcy petition materially contributed to or increased the extent of his insolvency by gambling unconnected with this trade or business.

The bankrupt had incurred gambling losses of £6,000 which he had paid to bookmakers and at Quarter Sessions the prosecution relied on a debt of £7,000 which the bankrupt owed to the Inland Revenue, but the Court of Criminal Appeal allowed the bankrupt's appeal.

The Court said that Counsel for the Crown had now conceded that income tax was not a debt arising out of or in the course of trade or business: it was a statutory liability due directly to the Crown and was the Crown's share of the profit. The result might seem very strange but that was a matter for Parliament and not for the Court.

Translating and Cash Register Robots

ELECTRONIC BRAINS AND computers for carrying out heavy statistical and accounting chores are in the centre of the stage today. Less in the limelight, though equally useful in a multilingual world, is the electronic translator. Some details are now available of a wonder machine, under construction at Birkbeck College in the University of London, on which high hopes are placed. It houses a television camera by means of which a work in any of four languages—French, Russian, Arabic, or Japanese—can be scanned and translated into English at high speed.

Basically the apparatus is said to be nothing more than a cash register, augmented by a magnetic "memory" in which words are stored as in a dictionary. In the original model, which lacked the television unit, typists working on the foreign script were employed to punch holes in tapes, which were then fed into the machine and decoded: the English version emerged at the other end on a teleprinter, and the average speed was about one thousand words per hour. The television camera now makes possible much higher speeds, since whole pages of the original text can be scanned in seconds. In fact, instantaneous translation seems to be not far off.

Another remarkable device is the "Electronic Reading Automaton" which *Boots Pure Drug Co. Ltd.* has purchased for installation in its Nottingham offices, from *Solartron Electronic Business Machines Ltd.* This machine, the first of its kind in the world, was described in ACCOUNTANCY for April, 1957 (page 189). It will read the printed sales record, produced on rolls by the cash registers in the chemist shops of Boots. The printed figures will be converted into electrical pulses, and the pulses will be fed directly into a special-purpose electronic accumulator, from which will be printed the totals required for accounting and statistical purposes.

Central processing of data recorded at the "point of sale" will enable relatively cheap and simple sales recorders to be used, and there should be much saving of clerical work. Reading speeds are said to be in the region of 250 words per second, and Boots are planning to use the new machine for dealing with many hundreds of cash register rolls every week. So automation spreads to the retail trade.

Is a Director in Insurable Employment?

THE DISTINCTION BETWEEN a contract of service and a contract of services is important in many branches of the law. An interesting example of the distinction occurred recently in an appeal to Mr. Justice Havers against a decision of the Minister of Pensions and National Insurance. The case has not been reported in the usual law reports, but it is given in the last issue (for January, 1958) of *Selected Decisions of the Minister on Questions of Classification and Insurability* (pamphlet M.8 of the Ministry of Pensions and National Insurance, H.M. Stationery Office, 1s. 3d. net.)

The Minister had ruled that the director of a limited company when injured in an accident was not working under a contract of service and was therefore not in insurable employment. The director, Mr. A, had complete control of the company; he was a skilled woodworker and during each week he worked part of the time for the company and part of the time for another business of which he was sole owner; he was not subject to any measure of control by any person over the manner in which he did his work. Mr. Justice Havers said that on this evidence Mr. A was not employed on terms that he should within the scope of his employment obey his master; he was employed to exercise his skill to attain an indicated result in such manner as in his judgment was most likely to ensure success. Therefore, the Minister was right in holding that this was not insurable employment.

The facts of this case were somewhat unusual and it does not, we think, follow that it is impossible for the director of a company which he controls to be in insurable employment. The position might well be different if there is a formal contract between the director and the company.

Special Pleading in Local Government Finance

THE LOCAL GOVERNMENT Bill plods its weary way through the House. One group of dissenters from at least part of the Bill is the "conference" of county borough councils. Originally comprising the county boroughs not eligible for Exchequer Equalisation Grant, the conference was swollen when the revaluation of 1956 disqualified from the grant several former recipients, whilst those who then received the grant for the first time have nevertheless continued, in accordance with their previous attitude, to condemn the grant.

The conference recently issued its memorandum of dissent. Although described as a memorandum on the White Paper on Local Government Finance (Command 209) and on the Bill, it has nothing to say about the main proposals of the Government. It makes no reference to the replacement of the main percentage grants by a general grant, not directly related to expenditure. It ignores the intention to pay the Rate Deficiency Grant (the new name of the Exchequer Equalisation Grant) directly to the district councils. It is concerned solely to object to the grant itself.

A reason still put forward, despite the new system of national valuation, against the Rate Deficiency Grant is the unreliability of rateable value as an index. In support, the memorandum adduces the different degrees to which agriculture, industry, commercial premises and dwelling houses are derated. Further support is claimed from the "continuing disparity of rateable values of similar properties in different parts of the country." The memorandum also complains about the intention to deduct from the new general grant some of the proceeds of the partial re-rating of industry—"the amount withheld should come wholly from the Equalisation Grant (Rate Deficiency Grant) since that is the successor to the 1929 Act 'block' grant which contained the original compensation." Any action on such tenuous historical reasoning would reduce the Rate Deficiency Grant below the level at which it could guarantee to each authority rateable resources equal to the average, and would thus strike at the very basis of the grant.

In objecting to the Government's withholding some of the proceeds of industrial re-rating, the county boroughs will command much sympathy and support. Their objection to the continuation of the rate deduction factor (now at the rate of twelve pence) is also valid. But their memorandum has one surpassing demerit—it fails to take so much as a glance at the broad picture of local government finance that is now painted. A deficiency or equalisation grant to bring the rateable resources of all rating authorities up to the national average, supported by a general expenditure grant based on objective factors and including powerful correctives for such factors as varying proportions of schoolchildren—the potentialities of such a scheme are too important to be set aside in favour of the one-sided arguments of this memorandum.

Commissions in the R.A.P.C.

THE ARMY HAS need of accountants in the Royal Army Pay Corps. Members of the Institute of Chartered Accountants in England and Wales or of the Society of Incorporated Accountants (or of any other of the recognised bodies), and men who intend taking the Final examination later, may apply for National Service Commissions or Short Service Commissions in the rank of Second Lieutenant. Men due for National Service may apply.

National Service commissions are for two years and Short Service Commissions are for three years on the active list and five years on the reserve, with the possibility of extension.

Candidates should apply in handwriting to the War Office (F9), Whitehall, London, S.W.1, and will then be sent the necessary form. Selection Boards meet in April, May and October. Candidates attending for interview and medical examination receive railway fares and travelling allowances.

Homes for Old People

FOR SOME YEARS the Chartered Accountants' Benevolent Association has been taking an active interest in *Crossways Trust*, an association of benevolent societies formed in 1949 to provide homes for old people who, in varying degrees, are in need of care and attention.

The first home of the Trust was opened in 1949 at Worthing, the second in 1951 at Englefield Green, near Windsor, the third in 1954 at Brighton and the fourth last year at St. Leonards-on-Sea.

The homes are of two types. Firstly, homes for the able-bodied—those who are able to look after themselves and keep their rooms tidy; ability to get on with other people is an important consideration. Secondly, homes for the infirm—those bedridden or who otherwise need some nursing attention every day; these homes are not nursing homes, nor are they suitable for the blind or the mentally ill.

Candidates for the homes need not be beneficiaries of the Chartered Accountants' Benevolent Association but their incomes must be such that they are unable to pay at normal commercial rates for the care and attention they need. Members of the Institute of Chartered Accountants, members and their wives and the widows of members are eligible for consideration. The Association has now ten places in the homes of the Trust and vacancies become available from time to time. All enquiries should be sent to the Honorary Secretary of the Association at Moorgate Place, London, E.C.2.

Policy Committee of the Scottish Institute

THERE HAS BEEN set up by the Council of the Institute of Chartered Accountants of Scotland a special committee to consider and report on the general policy that should be pursued by the Council of the Institute and the administrative arrangements for its implementation.

In particular, the committee is to consider:

(1) what action should be taken to promote understanding and co-operation between non-practising and practising members;

(2) publicity and like measures to encourage the recruitment of apprentices;

(3) how and to what extent the Institute, in association with uni-

versities and other organisations or otherwise, should and can foster accounting research and publish the results;

(4) policy to be followed as regards publication for the use of members of statements on accountancy subjects, whether in the form of pronouncements, recommendations or notes for guidance or otherwise, and the types of subjects to be covered;

(5) methods of improving relations with other professional bodies and similar organisations and with the general public.

Capel House

THE CAPEL HOUSE (Medcalf) Trust was founded in 1953 by Colonel Sydney A. Medcalf, O.B.E., T.D. ,D.L., who made a gift to the Society of Incorporated Accountants of Capel House, Enfield (subject to a tenancy in his own favour for the remainder of his life) and investments whose present value is about £40,000. The Trust was to be for the education, whether general or professional, of students and members of the Society.

The coming into effect of the schemes of integration, and the voluntary liquidation of the Society, make it impossible to fulfill the object of the Trust. An application has therefore been made to the High Court, firstly, for confirmation that the original trusts were valid charitable trusts; secondly, for an order that a scheme should be drawn up for the administration of the fund in accordance with the *cy-près* doctrine; or, thirdly, failing such an order, for a direction as to how and for whom the fund should now be held. If an order is made, it is hoped that it will be possible to draw up a scheme under which the trust will be administered for the educational benefit of members and students of the three Chartered Institutes.

A Financier's Tercentenary

WILLIAM PATERSON, BORN 300 years ago next month, had an adventurous career as company promoter and entrepreneur. He was born at Skipmyre, Dumfriesshire, and like many later financiers came to England to seek his fortune. He came according to the legend, "with a pack on his back" or as a pedlar, though there is no evidence to support the story.

He helped to engineer, from Holland, the Whig Revolution of 1688, and after it had placed William III on the throne began to make his mark as a professional financier. One of his first ventures was the *Hampstead Water Company*, founded in 1690; and he retained an interest in the company long after his connection with more ambitious undertakings had been severed.

It was in 1693 that a Parliamentary Committee held its inquiry into his proposals for setting up the Bank of England. Though it is probable that he was no more than the "mouthpiece" of a powerful City group, he is commonly regarded as the originator of the Bank. The formal charter of incorporation was granted in 1694, and Paterson, in recognition of his part in the preliminary negotiations, was made a director. Barely seven months later he resigned, outvoted by his co-directors on a particular issue.

Paterson then threw himself enthusiastically into a project of a totally different kind. The aims of the Darien colonisation scheme were threefold: to plant a group of Scots people on the isthmus of Panama, to free the natives from Spanish domination, and to open the South American trade "to all nations." Paterson successfully persuaded the *Company of Scotland Trading to Africa and the Indies* to invest its entire resources in the venture. But here, too, there is a history of discords. The Board withdrew its confidence from Paterson, and when the expedition sailed, in 1698, he accompanied it only unofficially. It proved a disastrous failure and Paterson, falling ill, had to return home.

However, his knowledge of finance and fiscal matters was exceptional, and in 1701 he was again consulted by King William on points relating to the "public credit." After the Union between England and Scotland, in 1707, shareholders in the Africa Company were repaid out of the "equivalent," but Paterson, whose name had been overlooked, was not indemnified for his losses until many years later. He received £18,000—but only after the passing of a special Act of Parliament.

Shorter Notes

Conference on Accounting Education

The Association of University Teachers of Accounting will hold a conference on Accounting Education on March 28 and 29 at the London School of Economics. The speakers will include Sir Edwin Herbert, K.B.E., Mr. H. O. H. Coulson, F.C.A., Mr. J. Ruscoe, M.A., B.COM., F.I.M.T.A., Mr. C. A. Herring, B.SC. (ECON.), F.C.W.A., Mr. J. E. Harris, B.COM., F.A.C.C.A., and Mr. A. D. Paton, C.A. Non-members will be admitted so far as accommodation is available. Those interested are asked to write to the secretary, Mr. Roy Sidebotham, B.A., A.I.M.T.A., A.A.C.C.A., Department of Economics, The University, Manchester, 13.

The Chartered Accountants' Benevolent Association

The annual meeting of the Board of Governors of the Chartered Accountants' Benevolent Association will be held at the Institute of Chartered Accountants in England and Wales, Moorgate Place, London, E.C.2, at 2.15 p.m. on Wednesday, March 26, 1958.

Woman Accountant as Acting P.M.

We do not think there has ever been an accountant Prime Minister anywhere in the world. But there is at the moment an acting Prime Minister who is an accountant—and a woman accountant. She is Mrs. Ellen Fairclough, who as Secretary of State in the Progressive Conservative Government in Canada is acting as Prime Minister while Mr. Diefenbaker is campaigning in the general election. Mrs. Fairclough is a member of the Certified Public Accountants' Association of Ontario. We published a note in our January issue (page 8) on Mrs. Fairclough as a member of the Canadian Cabinet.

Keeping the Worker Happy and Informed

An important ingredient of an enlightened policy towards workers is the supply to them of information about the employing concern. In *Positive Employment Policies*, a booklet recently issued widely in industry by the Ministry of Labour, case studies are given of how particular businesses have provided information to their employees, including financial information. The case studies also show how the businesses have tried in numerous other ways to induce satisfaction on the job, opportunities for advancement and security.

EDITORIAL

Economic Prospect

IN the spring a businessman's fancy lightly turns to thoughts of tax remissions. Chambers of Commerce and industrial organisations, having plied the Chancellor with *billets doux*, hope for favours to come. It is the turn of the fiscal year, and the new year may be so much better than the old. Economists, looking through a glass darkly and knowing only in part, foretell greater fortune and felicity; statisticians, venturing outside their margins of error, statisticate with more joy than they usually betray. The sap is rising, and economic life, like life itself, can be good.

So in a normal year, at least, and in a progressive economy. But Britain in 1958 is hardly normal, and its economy is marking time. We are but six months from the onslaught of the Great Credit Squeeze. Ministers talk rather coyly of expansionist measures to come in an undefined future, and in tough words assert that the present restrictionist measures must remain for an indefinite present. What real hope then, if we are realists, of some relaxation of austerity in the next few months?

Perhaps—an apparent paradox in a springtime of economic gloom—there is a better hope than many of us are disposed to allow to spring within us. For as the indicators of economic decline show up more and more unmistakably in the United States, and those of economic stagnation multiply here, we are surely drawing quickly near the time when "something will be done about it." The total of unemployed workers in the United States has just lapped the flood mark of five million, not reached for sixteen years past. Pump-priming and other devices—more defence spending, more public works, more building of houses—for injecting vigour into the American economy have been resorted to (though not yet very strenuously). At home, there can be little doubt that there does not now exist an excess of monetary demand that has to be squeezed out of the system. And still the index of production pursues its horizontal course. The time may not be far off when the Government can move into a forward gear, if a low one.

Perhaps, then, when the Chancellor opens his red despatch box on April 15 he may give voice to something like a comforting message, even if he gives very little away in hard cash. Any such message would have great value, however. A promise of easier lending by the banks would lift many businesses—especially smaller ones—out of the depression, psychological even more than economic, into which they have sunk. A rise in the limit above which the raising of new funds has to pass unscathed through the inquisition of the Capital Issues Committee—even more, the scrapping of the Committee—would make many more businesses, this time mostly medium-sized and larger ones, turn to ideas of expansion.

If and when the relaxation comes, it ought surely to come in a way that will encourage capital investment at home, rather than domestic consumption. Easier credit, freer capital issues, a slight lowering of interest rates, would all work in this direction. The other economic entity that competes with home investment and home consumption is the export trade, and exports should have second place of the three. They should not, it would seem to us, have first place, because the prime consideration is to build up still further our productive power, but they should have a good place, because we remain vulnerable, especially to speculative attack, until the gold and dollar reserves have been much enlarged in relation to balances held in London by holders abroad.

One might hazard the thought that Budget and Finance Bill themselves might this year be less a medium for tax remissions than a vehicle for tax rationalisation. If the profits tax were rationalised by being charged at a flat rate, a big advance would have been made, even if the total yield of the tax were left pretty well intact. If the purchase tax were rationalised by being charged at two rates, instead of six, there would be another advance which would be much welcomed by many businessmen, even if virtually as much tax were paid as before.

On earlier pages of this issue of ACCOUNTANCY we reproduce the summary of the report of the Council on Prices, Productivity and Incomes, as given in the words of the Council itself. It may perhaps be thought that the hopes, the expectations, that we have expressed of some fairly early easement of restrictionist policies conflict with the orthodox and rigorous statement of that distinguished body. But it is to be remembered that nowadays economic change occurs very quickly. Firstly, the Council took cognisance of "a definite recession" in the United States, but the recession has in the last few weeks greatly deepened. Secondly, since the report was prepared evidence has grown that any excess demand in the economy has disappeared. Thus (despite our quip about economists in our opening paragraph) we may quote the latest bulletin of the *London and Cambridge Economic Service:* "the idea that the economy is 'overloaded' . . . seems clearly out-of-date, and should not be given (for example) as a reason for a harsh Budget." Well, we shall soon know about the Budget at least.

An address under the title "Latest Developments in Bids and Deals," given by Mr. R. G. Middleton to the London and District Society of Chartered Accountants on February 18.

Takeover Bids

by R. G. Middleton

DURING THE LAST seven months of 1957 there were over 200 bids made for control or ownership of quoted companies. Most of them were successful. Most were made with the approval of the directors of the company bid for, but an important number were made over the heads of the Board. These bids were made for many reasons, but group themselves roughly into four classes—namely, genuine industrial mergers; bids by empire builders; bids of which the object was to exploit the stock exchange quotation of the taken-over company (as with shell companies); and bids where the object was to exploit the assets of the taken-over company, including in this expression tax losses. These groups overlap and are not exhaustive. It is in the three last groups, where there is often an element of aggression by the bidder, that the most interesting developments are taking place and it is this field, involving "shell companies," non-voting equity shares, infiltration by nominees, bids for 51 per cent. and battles between bidder and directors that I intend to discuss. I shall consider first the various reasons why bids are made, then how they are made, and finally how they may be opposed and whether they ought to be opposed.

Why Takeover Bids are made

Industrial mergers

Although of smaller technical interest, mention should be made of genuine industrial mergers such as the *Courtaulds–British Celanese* amalgamation. They generally take place between companies engaged in similar trades and are made for economic reasons, among which may be the elimination of competition. The merger is generally effected by an offer by one of the two companies for the shares of the other on a share exchange basis.

Shell companies

A shell company is a company which has sold or lost its business, or most of it, but continues its stock exchange quotation. Its assets are therefore cash or cash equivalent and may be precisely valued. Such a company may acquire a business on its own account as *Cable and Wireless* after nationalisation of its assets became an investment trust. Or, as is becoming fashionable today, the company may become an industrial holding company; that is to say, by a share exchange it may acquire other companies of a diverse character and thus become the holding company of a considerable group. In practice there is usually a change of shareholding control before a shell is developed as an industrial holding company. A shell company commands a premium of £8,000—£12,000, over its net assets value, this being the market value of a quotation.

Among purposes for which shell companies are acquired are the following:

(*a*) As a means of enabling the owner of a surtax company or business to avoid surtax on undistributed profits and to establish the value of the shares for estate duty.

(*b*) To enable the owner of an existing business to make a capital profit.

(*c*) To market a small business which is not ready for a stock exchange quotation.

Surtax

A surtax direction cannot be made on a company which, broadly, has a quotation and in which the public own at least 25 per cent. of the voting equity capital. Now that the Chancellor has furled his umbrella (that is to say, that he has declared that surtax will be levied on surtax companies not distributing a reasonable part of their incomes) shell companies have an obvious appeal to owners of businesses who pay or are liable to pay surtax on the whole of the profits. The attraction of obtaining control of a shell as an alternative to direct flotation is clear where, as often happens, the business is not suitable for floating on its own; a quotation can be acquired, in effect, by the owners of the business acquiring control of a shell company to which the surtax company or business is sold. As it is necessary for at least 25 per cent. of the voting shares to remain held by the public, control only and not ownership is needed. A quotation may also ensure that on the death of a controlling shareholder estate duty is levied on the market price and not the break-up value of the shares.

A good example of such an acquisition is the case of the *Dorchester Hotels Ltd.* This company is believed to have been a surtax company in the control of the McAlpine family. Control of a shell (or near shell), *New*

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Zealand Crown Mines, has been acquired by the family trusts as a result of a takeover bid in 1953, the public retaining an interest of 40 per cent. in the equity. The shares in Dorchester Hotels Ltd. were, in September, 1957, sold to New Zealand Crown Mines (now called *Development Securities*) for £400,000 and £1.8 million of unsecured non interest-bearing redeemable loan stock. The loan stock was redeemable by sinking fund in 1977 and would obviously be repayable only out of profits. Thus the original shareholders in Dorchester Hotels retained their control and simultaneously capitalised their past and future profits.

An earlier or better-known example occurred in 1955 with *William Hill (Football) Ltd.* This company, which ran very profitable fixed odds football pools, and was, it is believed, a surtax company, was in 1955 sold for £1,050,000 to *Holders Investment Trust Ltd.*, a company which had been formed under another name in 1933, control of which was acquired by the shareholders of William Hill, and which had in 1955 investments worth about £86,000. The price was to be paid by annual instalments of £150,000 with an option to the company to rescind the arrangements for payment if the profits dropped. The shareholders in William Hill thus receive in the form of capital the profits of the seven years following the sale free of surtax.

Another example is the sale in August, 1957, of *Martin Black* to another shell, *Jura Estates*. Jura Estates was formerly a rubber company which sold its estates in 1954. At the time of the acquisition of Martin Black it had net assets of £86,000 in cash. The sale for £450,000 was made for cash and unsecured loan stock.

Deals of this kind have obvious advantages in saving tax and in not requiring the consent of the Capital Issues Committee. They also require a substantial holding by the public and offer opportunities of abuse, particularly with regard to the terms of repayment of loan stock. On the whole, I believe minority shareholders in these companies have done very well.

Marketing a small business

Another distinctive use of the shell technique is as a means of marketing a company not yet ready for flotation on its own, either because it is young and has an insufficient record or because it is too small. *Grundig (Great Britain) Ltd.* was marketed in this way by sale to *Gas Purification*. Gas Purification and Chemical Co. Ltd. was until 1953 a supplier in a modest way of chemicals for purifying gas. It had an issued capital of £57,500 and annual profits of around £20,000. A majority of the shares were in 1953 acquired as a result of a market offer. It was then developed as an industrial holding company acquiring new companies and interests generally in exchange for shares. To ease its liquid position in August last it acquired in exchange for shares a private investment company having net assets of £80,000. No doubt the investment company had non-distribution relief piled up which would, in effect, be saved. Gas Purification is an example of a shell or near-shell being expanded into an industrial holding company largely by share exchange. At present it has eleven diverse subsidiaries and an issued capital of £680,000.

Other prominent examples of shells being acquired and expanded into industrial holding companies are *Pena Industries Ltd.* (formerly Pena Copper Mines), *Paragon Holdings Ltd.* (formerly Pahang Para Rubber Syndicate Ltd.) and *Knitmaster Holdings Ltd.* (formerly Chinese Engineering and Mining Co. Ltd.).

Each of these three had disposed of or lost its trading assets and been developed from a shell into a substantial holding company. Some tend to offer Preference shares for their acquisitions. During the last year all these companies have been actively bidding to extend their empires by share exchange.

The expansion of shell companies into industrial holding companies can put large and important interests under the control of Boards which do not necessarily have any proved ability to manage them.

Stock Exchange shell requirements

There is another advantage in marketing a business through a shell. When shells first began to be used as a means of marketing companies not ready for a quotation on their own, the Stock Exchange did not require particulars of the acquired company to be published. While the Exchange has now tightened up its requirements and the particulars must be published, it is still possible, in effect, to float a company via a shell with far less information being given than if the company itself applied for a quotation. Logically the company should be able to form its own holding company and apply for quotation but this would require the whole rigour of the new quotation requirements of the Stock Exchange to be run. It is easier to use a shell.

Bids to exploit assets

A company with written-down assets, a conservative dividend record, or both, and whose shares are widely held, is a sitting target to a takeover bidder who sees that he can obtain control or ownership of assets at less than their market value. A contributory cause is the wide difference between distributed profits tax and non-distributed profits tax. It is, generally speaking, essential if a bid of this nature is to be successful that the shares of the taken-over company should be widely held, as a scattered body of shareholders is in no position to bargain for their price. Their yardstick is the market price of the shares bid for, not the value of the assets taken over.

The *Savoy Hotel* in 1953 found itself in a vulnerable position. Its assets were capable of more profitable exploitation and tempted ambitious bidders to bid far beyond the market price of the shares for control of the company.

Often the assets in such companies are freeholds carried at an undervalue. *Sears*, *The House of Fraser* and *Great Universal Stores* know how to acquire and turn such companies to account and have continued active throughout the past year. An interesting instance was the bid for the shares of *Barkers*. *Debenhams* bid first for the whole capital of Barkers with the approval of the

directors of Barkers, but had to give way to Frasers when it was revealed that Frasers had infiltrated into Barkers by acquiring more than 10 per cent. of the shares of Barkers. Thus by acquiring a small minority holding, if necessary in the name of a nominee, a potential bidder for ownership can keep rivals at bay and wait his time.

The rubber companies have been and are being subjected to an all-out assault by persons wishing to acquire control. Many of these companies have had conservative balance sheets and have been obvious targets for persons in Malaya who have known the true value of the estate. Many of those companies have sold their estates and become shells. Sometimes their directors, after the sale of the estate, have put up the shells for sale.

There are many other reasons why companies are taken over. Companies with losses may appeal to companies with profits; and conversely companies making large profits appeal to companies with heavy losses, as a means of accelerating tax relief in the parent. *British Photographic* is a case in point. This company has incurred large losses and is at present the subject of competing bids for takeover.

Companies with liquid assets appeal to companies with a capital shortage and may avoid an approach to the Capital Issues Committee. No doubt this was the reason why *Gas Purification* took over *Hafron Securities Ltd.*

How the Bids are Made

There are two current features of takeover bids which are of topical interest—namely, the issue of non-voting Ordinary shares and the bid for 51 per cent. instead of the more usual 90 per cent. of the voting capital.

If the object of the bid is to acquire the ownership of the company, the bid takes the form of an offer for all the capital, with a minimum of 90 per cent. If the holders of 90 per cent. accept, the bidder, if a company, can compel the outstanding minority to transfer their shares to it (generally on the same terms) and likewise the minority can compel the bidder to take their shares. Such offers can be made for cash or exchange of shares, and while shares offered are generally shares in the bidding company of the same kind as the acquired shares, they need not be. Shares offered in exchange for Ordinary shares are frequently non-voting equity shares, usually called "A" Ordinary shares.

Non-voting Ordinary shares

The offer of "A" Ordinary shares as a means of acquiring the capital of another company is or was until very recently on the increase. It is the usual method of the *Sears* and the *Great Universal Stores* groups. For example, in December, 1957, Great Universal Stores successfully acquired the Ordinary share capital in *Hope Bros.* for "A" Ordinary shares in the teeth of the criticism of the City. Shareholders in Hope's were concerned solely with the relative market values of the shares they owned and the shares they were offered.

Although the issue of "A" Ordinary shares on this scale is a post-war development, it dates back to 1918 when *J. Lyons and Co.* issued them as a means of keeping control in the family while enabling the public to share in the profits. The nominal total of the issued non-voting Ordinaries quoted on the London Stock Exchange is today about £500 million (or about 7 per cent. of all total issued quoted equities). Of this total £450 million is accounted for by ten companies, of which *Marks and Spencer, Great Universal Stores, Sears, Allied Bakeries* and *A. E. Reed* are prominent. Not all the non-voting Ordinaries were issued in exchange for shares in other companies: many were bonus issues. The most spectacular, *Marks and Spencer*, out of a total capital valued at £205 million is controlled by voting Ordinary shares valued at £4½ million, mostly held by the family.

Some "A" Ordinary, however, carry votes but fewer than attach to the corresponding Ordinary shares. The *House of Fraser* "A" Ordinary shares, some of which were issued in August, 1957, to the Ordinary shareholders of *Barkers*, have one vote for twenty stock units.

The propriety of issuing "A" shares has been much questioned lately. The objections to them are that they deprive their holders of control or effective voice in the control of the company. While it is accepted that Preference shareholders having a limited stake in the profits and assets should, in times of prosperity, have no votes, it is generally felt that holders of all equity shares should have an equal voice in the control of the company. The defenders of "A" shares say that the public should accept responsibility for a known risk: in other words—*caveat emptor*—the buyer is not compelled to take them or buy them.

In spite of the indifference of investors and shareholders opposition to "A" shares has been growing, particularly from institutions. They have been publicly denounced by chairmen of investment trusts and their issue has been actively opposed. Investors generally have, however, shown no marked dislike of them and the price of an "A" share is generally only a little less than its voting counterpart. Differences in price are generally caused by management selling "A" bonus shares and buying Ordinary to strengthen their control; or as had just happened with *Mappin and Webb*, where there was temporarily a big gap in the prices, by someone bidding for Ordinaries to acquire control. The issue of "A" voting shares is a device which may be used to keep control of a company within a family as in *Marks and Spencer* or *Carreras*, or within the Board, as in *Savoy Hotel* and *House of Fraser*.

No takeover bid offering "A" shares appears to have failed on the grounds that the shares carried no votes. The shareholders of Barkers, even institutional shareholders, did not hesitate to accept Fraser "A" in spite of advice from the financial Press. All they looked to was the price and their profit on the deal. Nevertheless, it is doubtful whether any issue of "A" shares for cash would today be dared. Knitmaster Holding, an industrial holding company grown from a shell, has just created five million "A" Ordinary shares for use in future takeover bids. It will be interesting to see how they get on.

Opponents in the City (which includes the financial Press) have been pressing for the London Stock Exchange to refuse quotation for future issues of "A" shares or for companies to undertake not to issue them.

The London Stock Exchange in August, 1957, announced that while it "did not look with favour on the voteless equity share" it intended to do nothing about it, saying that it was the job of Parliament to amend the Companies Act. As recently as December 18, 1957, the President of the Board of Trade refused to take any legislative action. It is difficult to see how effective legislation can be enacted that does not create other difficulties. Unless all shares are to be given a vote it would be necessary to define an Ordinary or equity share. To define an Ordinary share would be extraordinarily difficult. Shares can be created with every mixture of Preference, Ordinary and Deferred rights to income or capital and there are some companies, including a television company, which have non-voting "A" shares as an essential and legitimate element in their structure. Other companies, such as the *Midland Bank*, have a sliding scale of votes varying with the number held. On the whole the drafting problem seems insoluble.

If the Stock Exchange will not do anything it seems that the problem as an element in a takeover by share exchange will go by default until at any rate takeover bids become less profitable.

The problem was early recognised and solved in New York, where the stock exchange has since 1926 refused quotations to non-voting equity shares. The problem is slightly easier in New York, where quotation is reserved for comparatively fewer and larger companies.

It is notable that by way of reaction several companies have lately given votes to their voteless "A" Ordinary shares, examples being *British Home Stores* and *Baker Perkins*. The former did so probably as an anti-takeover measure, to make a takeover twice as expensive, and the latter because it hoped to come to the market for new finance and thought it was, on that account, advisable to avoid criticism.

Finally, on this subject it is worth noticing that Mr. Gaitskell has criticised the unreality of shareholders' control, using the argument to justify government takeover—*alias* nationalisation. So far as "A" shares are concerned his argument is right and the City, by refusing to condemn them, is playing into the hands of the advocates of nationalisation.

The 51 *per cent. bid*

If control and not ownership is the aim a bidder might offer not for the whole of the capital of the company, but for 51 per cent. of it. Such a bid is all that is needed if a shell is required for surtax purposes. But the bid might be used with deadly effect if the risk of becoming a minority shareholder is unacceptable.

To see the cruel way in which such bids work, take the case of *F.M.S. Rubber Planters*, where a London house over the heads of the directors bid on behalf of an unnamed buyer for 51 per cent. of the capital. The price offered was slightly above the market price. The offer stipulated for 50,000 shares only to give control, and stated that any over that number might be refused. Such an offer puts the shareholder, if he is one of many, in an immediate difficulty. If he refuses or even delays he will find himself as one of a minority of 49 per cent. in a company controlled from he knows not where. Unlike a shareholder faced with an offer for 90 per cent., he knows that probably the stipulated minimum of his fellow shareholders will accept and consequently rushes in self-defence to accept himself. It is no good holding 10 per cent. of the shares yourself, or even 49 per cent., if control is passing abroad to people who are beyond the effective reach of the Chancery Court and who may sell the assets at their own price and manage the company as it suits them. No wonder that the F.M.S. offer was over-accepted in six days.

While bids for small holdings have recently been most common in rubber companies they have been made in other instances. One such was a bid made in September last for 20 per cent. of the shares of *Raphael Tuck*. Within a few days 50 per cent. accepted, leaving the bidder with the option to take or refuse the extra 30 per cent.

Bids for 51 per cent. are heavily frowned on by the financial Press, the *Financial Times* referring to them as "a bad characteristic". The panic induced in a shareholder, by the thought that he may be a minority shareholder in a company threatened with control by someone he fears, may induce a faster flow of acceptances than a straight offer for 90 per cent. with the usual three weeks' time limit. The device is capable of development and abuse and may work great injustice on a non-accepting shareholder. It offers an easy way of infiltrating a company to keep other bidders out.

Defeating the Bidder

It is interesting to consider what has been and can be done to combat a threatened takeover bid of which the directors do not approve, either because they feel it to be contrary to the best interests of the company, or, more usually, of themselves. There is also the question of the propriety of resistance.

Sometimes directors are constrained to support a takeover even though it costs them their office when the price offered is clearly a good one. Sometimes they even recommend a bid, only to find it knocked out by a rival and larger offer. Such an outcome occurred over the sale of *St. James Properties*. The directors recommended and accepted for themselves an offer of 16s. per share, but after a battle it was an offer of 25s. made by *Hammersons* that was accepted: it is hoped that the directors were able to extricate themselves from the first offer and accept the second.

Companies whose assets are carried at low values in the accounts or which pay a conservative dividend, so that the aggregate of the market values of shares is substantially less than the break-up value of the company, have a remedy which is obvious and has frequently been adopted—that is to say, assets may be revalued and dividends increased so that the market price of the shares rises. A return of capital and a bonus issue may also

help to close the gap. Several companies have adopted these tactics. If the price cannot be jacked up in this way there may be a good case for liquidation or redeployment of assets by new owners. In November, 1957, the Capital Issues Committee refused permission for *K.M.S.* (*Malay States*) *Rubber Plantations* to make a capitalisation and return of capital, a purpose of which was to scare off a takeover bidder.

Actions of these kinds may well be taken without reference to a threatened takeover bid. But there are other actions which directors have taken as purely anti-takeover measures. There was, for example, the well-known case of *Savoy Hotel*, which was threatened with takeover by bidders who realised that the Berkeley Hotel site was capable of being turned to greater profit than use as a small hotel. To defeat the bidders, the Savoy directors in effect transferred the freehold of this hotel to a new company, vesting the controlling shares in the trustees of the pension scheme of the Savoy company, thus ensuring that a new Board of the Savoy could not get control of the site. The move was inquired into by a Board of Trade inspector, who reported that the directors had acted improperly.

A different approach along the same lines was adopted by the *Assam Co.* whose directors suspected that Indian interests were buying on the market preparatory to making a bid. They foresaw control of the company passing to India and subsequent discomfiture of stranded shareholders who would have to suffer Indian remittance tax on their dividends. The directors were not opposed to a genuine offer to all shareholders, but only a "51 per cent. offer" and to prevent "any single stockholder from obtaining any of the advantages of control without having made an acceptable formal offer to stockholders generally," the directors circularised to shareholders the "break-up value" of the shares and lifted the dividend. Further, they capitalised reserves and made a bonus issue of one for two. They made a special issue of £50,000 in shilling shares, each carrying a vote (equalling one-third in total of the voting power of the company) and allotted them to pension fund trustees. As a condition of issue, the trustees were under an obligation to transfer these shares to any purchaser of the rest of the stock who bid for and received at least 75 per cent. of it. Otherwise the shilling shares were not on the market. To prevent the trustees having perpetual control it was also provided that at the end of seven years the company in general meeting could call on the trustees to consolidate their shilling shares into £1 shares and that the trustees would not use their powers to block the step. These moves were supported by the company in general meeting. There was certain criticism in the Press on the basis that control and ownership should be together, but criticism was mainly disarmed by the fact that the directors reported every move to their shareholders, who gave their full support.

The directors of the *Braid* group in 1957 adopted a different method. In order to make speculative takeover more difficult they lengthened service agreements for existing directors and modified the voting rights attaching to shares arising on transfers made after the date of the meeting so that, during the first year of holding, the holder had no vote and during the second year half a vote per share. A director was required to have held his qualifying holding for at least five years—except, at the directors' discretion, for a whole-time employee. Although severely criticised by the financial Press, the proposals were adopted by the shareholders.

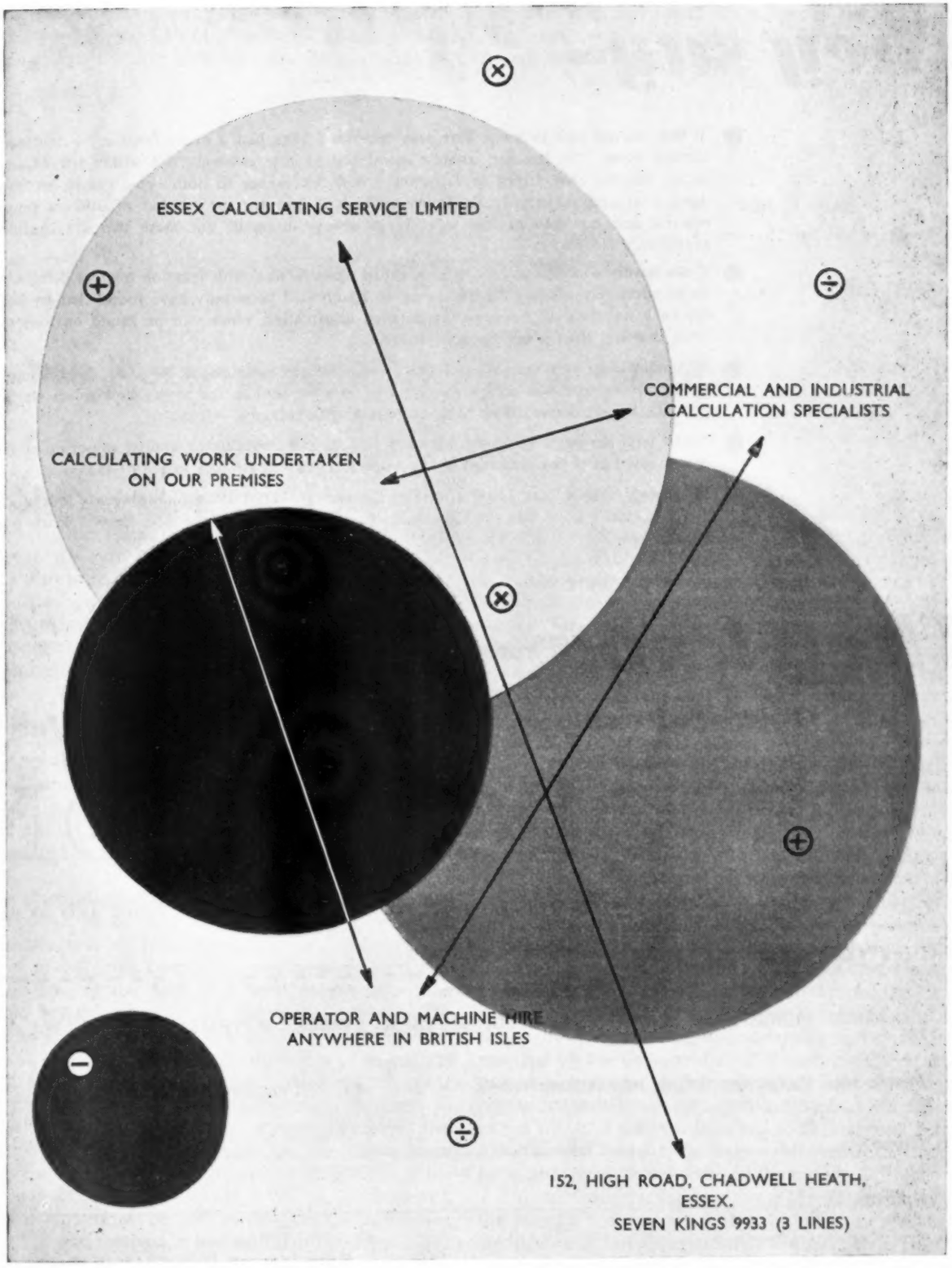
The propriety of resistance

There remains the question of the propriety of the directors' actions in resisting takeover bids at all. Directors tend to be hostile to a takeover bid for their company and their first question to their professional advisers tends to be, not "ought we to resist it?" but, "how do we defeat it?" The attitude is natural and understandable, particularly if, as so often obtains, directors have no service contracts and fear to lose their jobs or, as with some managing companies of rubber companies, their contract. However anxious a Board may be on personal grounds to avoid new proprietors or a new controlling shareholder, its clear duty is to consider the shareholders as a body.

A popular ground on which directors will take their stand of opposition is the so-called good of the company. Sir Andrew McFadyean in his statement to the shareholders of *Ladang Bahru* said that the Board deemed it their duty to administer estates not only for the shareholders but for the staff and workers in Malaya. Strictly his Board were not entitled to administer for the benefit of the staff and workers, except in so far as this would give the company a good reputation and thus benefit the shareholders.

There can be no interest of the company distinct from the interest of the shareholders, although the law may well almost imperceptibly be undergoing a change. The directors' concern is with the assets and business of the company which they must administer for the benefit of the shareholders generally. While directors owe duties to the shareholders generally and are right to advise shareholders of the value of their shares, which the Board alone may be able to assess, directors are not concerned with the personality of the owners of the shares and cannot claim that the company has any interest in the matter. The directors and employees individually may have such an interest and individual shareholders may, but the company cannot. The directors may be acting *ultra vires* if they spend any of the money of the company on resisting a takeover bid for the shares.

A large-scale resistance to a takeover threat has just been announced by the steel companies, who are threatened by a government takeover of the shares. The right of directors to spend the money of the company in resistance to nationalisation was raised in the case of *Morgan* v. *Tate and Lyle*, in which the House of Lords considered whether expenses incurred in an anti-nationalisation campaign were deductible for Schedule D. It was decided by a majority of one that the cost of the campaign to resist the acquisition of the assets of the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company was a trade expense for Schedule D, but it was admitted on both sides that if the cost had been incurred in a campaign to resist a threat to take over the shares of the company it would not have been so allowed and would, moreover, have been *ultra vires* the company and the directors.

Directors faced with takeover threats must therefore act warily. If they spend the money of the company on resisting him a successful bidder may require them to repay it out of their own pocket.

A third party cannot normally sue for a debt. It would often be useful if he could. Action for money "had and received" may provide an unexpected way.

Debts Recoverable by Third Parties

IT IS AN elementary legal rule that a person who is not a party to a contract cannot sue one of the parties to it. He cannot do so even though the contract may have been intended to benefit him. Yet it is often desired in practice that an arrangement made between two should operate to the advantage of a third and that the third should, if legally possible, have a right of recovery and not be a mere recipient of benefit if the party to the arrangement does in fact carry it out. Certainly, a creditor may request his debtor to pay the debt over to a third party, but in general the third party would have no right to sue the debtor for the money unless the debt were assigned in the appropriate form. The action known as an action for "money had and received" does, however, in certain circumstances permit a third party to recover money even though he is not a party to a contract or an assignee under an assignment.

The practical possibilities of the action for money had and received in meeting commercial and financial requirements have not been fully explored. For example, a creditor in a foreign country may request his debtor in England to pay the debt to a third person who is in England instead of remitting the money abroad. The debt may have been incurred abroad, by loan or otherwise, and there may be currency objections to paying the creditor personally. Currency restrictions might also make it undesirable to resort to an assignment of the debt. In such a situation one might be inclined to say that the third person could not sue the debtor for the money even though the latter undertook to pay him. According to the decision in *Shamia* v. *Joory* (1958, 2 W.L.R. 84), however, the third party may be able to rely on the action for money had and received in a situation of this type.

The decision in that case shows that the scope of this old action is wide, perhaps unexpectedly wide. In spite of its name it has long been recognised that it is not always essential that the defendant should actually have "received" the money for the plaintiff. Either the defendant must have actually received money or something must have occurred which is equivalent to a receipt of money by him.

Money "Had and Received"

There are cases in which the action will lie although no money was ever received by the defendant, but where he has merely admitted that he holds value in money to which the plaintiff is entitled. These cases were extended to the facts in *Shamia* v. *Joory*.

The defendant was an Iraqi merchant carrying on business in England. He owed B, his agent in Iraq, money as remuneration for services in Iraq. At the request of B the defendant agreed to pay £500 (out of money owing by him to B) to C, B's brother who was a student in England. The defendant informed C of this arrangement and in due course sent C (the plaintiff in the action) a cheque for £500. Because of an irregularity the cheque was not met and the plaintiff returned it to the defendant at his request for correction. Notwithstanding the defendant's promise to send the corrected cheque back to the plaintiff, it was never sent and the £500 was never in fact paid to C. In an action by C against the defendant for money had and received by the defendant to C's use the defendant admitted his promise to B to pay C the sum claimed, but contended that he was no longer indebted to B at the date of the writ and was not indebted to C in view of certain unauthorised property dealings subsequently carried out by B, for which B had received the money.

This contention failed to impress Mr. Justice Barry and the plaintiff's action succeeded, although he was not a creditor of B but the recipient of a gift from him. B's letters from Iraq were written in guarded language owing to restrictions on the export of currency from that country, but the facts were clear.

The reason for the plaintiff's success was not that he was an equitable assignee of the money. There was no evidence that notice of any assignment had in fact been given to him and B's letters to him certainly gave no hint that B had assigned to the plaintiff any moneys owing to B by the defendant. Nor was the plaintiff's claim sustainable on the ground of damages for breach of contract in not sending a second (and good) cheque. The inference was that the parties did not intend to enter into any legal obligation independent of the obligation which gave rise to the sending of the cheque in the first place.

The plaintiff's claim succeeded on the basis of the following statement of the law made by Blackburn, J., in *Griffin* v. *Weatherby* (1868, L.R. 3 Q.B. 753):

> Ever since the case of *Walker* v. *Rostron* (1842, 9 M. & W. 411) it has been considered as settled law that where a person transfers to a creditor on account of a debt, whether due or not, a fund actually existing or accruing in the hands of a third person, and notifies the transfer to the holder of the fund, although there is no legal obligation on the holder to pay the amount of the debt to the transferee, yet the holder of the fund may, and if he does promise to pay to the transferee, then that which was merely an equitable right becomes a legal right in the transferee, founded on the promise; and the money becomes a fund received or to be received for and payable to the transferee, and when it has been received an action for money had and received to the use of the transferee lies at his suit against the holder.

In applying this principle, Barry, J., pointed out that the plaintiff in *Shamia* v. *Joory* was not a creditor of his brother, B, but was in truth the recipient of a gift. But Barry, J., did not think that this fact was material: "I can find nothing in principle, or in any of the authorities cited to me, which suggests the need for consideration as between the transferee and the transferor of the fund which the transferee is seeking to recover."

A "Fund" Accruing to Debtor

Nor did Barry, J., think that there was any magic in the word "fund" in the statement of law in *Griffin* v. *Weatherby*. He thought that the word was clearly chosen not as a term of art but as a word aptly fitting the facts which were then under consideration. The problem in *Shamia* v. *Joory* did not concern the meaning of this particular word but the nature of the fundamental requirement which, other conditions being satisfied, would enable the doctrine enunciated by Blackburn, J., to operate in favour of the transferee.

"An identifiable sum of money entrusted to a third party in order that he, the third person, should hand it over to a transferee, or indeed for any other purpose, is, I think, most certainly not required." Barry, J., went on to say that "all that the law requires is that there must be in the hands of or accruing to the third person either a sum of money, or a monetary liability, over which the transferor has a right of disposal."

The debt in *Shamia* v. *Joory* consisted of a mere temporary debit balance in a running account between the defendant and B, yet this fact made no difference to the decision. Barry, J., said: "It matters not, I think, from what source the liability arises, and I see no reason why it should not include a debt for money lent, or goods sold, or services rendered, or a debt of any other kind; nor do I think that the situation can be altered if the debt is of a temporary nature, which in the ordinary course of things would shortly be extinguished by items of contra account, provided, of course, that the debt still exists at the date of the transfer and of the debtor's promise of payment made to the transferee." There is no inconvenience or injustice in treating a temporary debt of this nature as a "fund" which the transferee can recover in an action for money had and received, for the debtor is not bound to accept the transferor's instructions, still less is he bound to make any promise of payment to the transferee.

What happened in the leading case of *Griffin* v. *Weatherby* was as follows. A person B was indebted to another person C and was also a creditor of S Ltd., which was being wound up, and the defendant, A, was official liquidator of that company. A written request addressed to A to pay to C or order £600 on account of moneys advanced by B to the company was signed by B, who sent this request to C, who forwarded it to A, requesting to know whether he would honour the order, and A replied that he would honour it after funds came into his hands in a few weeks' time. Funds did come into his hands, but owing to a dispute as to the amount remaining due to B nothing was paid then or later. In his action against A for the £600 C succeeded. Here C, unlike C in *Shamia* v. *Joory*, was a creditor of B, but, as we now know from the ruling in that case, it would have made no difference if he had not been. It is not essential for success in this action for valuable consideration to have moved from B to C.

The Need for "Privity"

It is often said that in order to maintain an action for money had and received the money sought to be recovered should have been received by the defendant in such circumstances as to create a "privity" between him and the plaintiff. This expression means that there must be some link between the two, although a contractual link is not necessary—if they were connected by a contract to which they were parties there would naturally be no need to resort to the action for money had and received.

The need for "privity" is illustrated by the case of *Jones* v. *Carter* (1845, 8 Q.B. 134), in which the purchaser of a ticket in a Derby lottery sold it to the plaintiff and the horse named in the ticket later won the race. It was held that the plaintiff could not maintain an action for money had and received against the treasurer of the lottery for the amount of the prize. The treasurer had no notice of the transfer of the ticket, nor did he agree to pay the money over to the plaintiff. But it was admitted that he held the money for the benefit of the latter. Denman, J., said: "The plaintiff cannot recover the sum demanded as money had and received to his use, for want of privity between him and the defendant. There is no such privity, although it is admitted that the defendant held for the benefit of the plaintiff; the defendant's liability was to the assignor."

There was clearly privity in *Shamia* v. *Joory*. Not only did B impart to the defendant instructions to pay C but the defendant accepted those instructions and, in addition, after accepting the instructions, he promised C to pay the money to him. In *Griffin* v. *Weatherby*, also, the requirement of privity was satisfied, for A, the defendant, accepted the instructions to pay C and wrote to C to say that he would pay him.

But it is difficult to say what privity means exactly. Some writers have denied the need for privity but their view is hardly borne out by the precedents. Clearly privity is something different from the well-known idea of "privity of contract", for in an action for money had and received the plaintiff has not got to prove the existence of a contract between himself and the defendant supported by valuable consideration. But there must be some relationship or connection between them, or at least between the plaintiff and the money in the defendant's hands or the so-called "fund." The basis of the action was thus described by Lord Wright, Master of the Rolls, in *Brooks Wharf & Bull Wharf* v. *Goodman Bros.* (1937, 1 K.B. 534, 545): "The obligation [to pay] is imposed by the court simply under the circumstances of the case and on what the court decides is just and reasonable having regard to the relationship of the parties. It is a debt or obligation constituted by the act of the law, apart from any consent or intention of the parties or privity of contract."

Is a Promise Necessary?

Although there need be no privity of contract between the third party and debtor, the privity which must exist between the two may take the form of a promise. A promise is often made to the third party but it is doubtful if this close form of privity by promise is necessary. It does seem to be necessary that the debtor should promise his creditor to pay the third party.

It was laid down in *Hodgson* v. *Anderson* (1825, 3 B. & C. 845) that a creditor has a right to insist on payment to himself, or to such third person as he thinks fit. Whether he can retract an order once given it was not necessary to decide in this case, because it was held that "a creditor is not at liberty to withdraw the authority, provided there is a pledge by the person to whom the authority is given, that he will make the payment according to the authority." The pledge was given to the creditor. Bayley, J., did not think it essential to add that the pledge should also be given to the third party. In a subsequent case it was decided that such *authority* given by the creditor to the debtor is not revocable (see *Metcalfe* v. *Clough* 2 M. & R. 178).

In *Hamilton* v. *Spottiswoode* (1849, 4 Ex. 200), one of the precedents relied on in *Shamia* v. *Joory*, it was said that the case could not be substantially distinguished from *Hodgson* v. *Anderson*, though in *Hamilton* v. *Spottiswoode* there was a promise to the third party—suggesting that such a promise was not essential to support the decision. There the "fund" was represented by moneys which would become owing to the transferor for goods to be supplied by him in the future to the purchaser-debtor who had been instructed to pay them—or part of them—to the transferee and had promised the transferee that he would do so.

The so-called "fund" in *Walker* v. *Rostron*, the important case which has already been mentioned, consisted of the proceeds of the sale of goods purchased by the transferor from the transferee, which were in the hands of another person, the transferor's agents, for the purpose of resale. In this case there was a double promise. It is worth setting out the facts.

The plaintiff in an action for money had and received sold goods to X, taking his acceptances for the price, and sent them to the defendant, X's agent, who consigned them to his partners abroad for resale. The plaintiff had doubts about X's solvency and required further security, whereupon by agreement between the plaintiff, X and the defendant, X handed the defendant a letter authorising him, out of any remittances which he might receive against the net proceeds of the resale of the goods, to pay the acceptances as they became due, if not previously honoured by X. The defendant assented to the terms of the letter. Before the bills became due X became bankrupt and the defendant, having received the proceeds of the goods, refused to pay any part thereof to the plaintiff. The defendant instead handed the money over to X's assignees in bankruptcy. In his action against the defendant for money had and received the plaintiff was held entitled to recover the amount of the acceptances from him.

There was held to be an "appropriation" of the money irrevocable except by the consent of all parties. It did not matter that at the time of this appropriation the debt (that is, the defendant's obligation as an agent to account for the price) was not immediately payable; the goods had not then been resold. Lord Abinger, C.B., said: "This is a case of a party engaging himself to appropriate the proceeds of the goods according to certain directions of the owner, and appears to us to fall within that class of cases where, when an order has been given to a person who holds goods to appropriate them in a particular manner, and he has engaged to do so, none of the parties are at liberty, without the consent of all, to alter that arrangement."

This decision suggests a sphere of usefulness for the action for money had and received which does not seem to be generally appreciated, namely, in the sphere of insolvency and credit arrangements. So far as the bankruptcy rules were concerned the agent probably acted rightly in paying the money to the assignees rather than to the individual creditor. But the agent had undertaken to pay the latter. This undertaking facilitated the extending of credit to the principal. Whatever the law of bankruptcy may say about the proper destination of the actual "fund," it looks as if the notional fund may be personally recovered by the individual creditor as money "had and received," even though the actual fund has been duly paid over for the benefit of creditors generally. Thus the existence of such an action may be treated as extra cover for a creditor.

The Cohen Report

We reproduce the summary given at the end of the first report of the Council on Prices, Productivity and Incomes. The three members of the Council are Lord Cohen (chairman), Sir Harold Howitt (a member of the Council of the Institute of Chartered Accountants in England and Wales) and Sir Dennis Robertson. The full report, published by H.M. Stationery Office at 2s. net, gives numerous statistics and facts only barely summarised here, and detailed arguments in support of the conclusions.

Facts and Figures

1. The post-war years have been years of high employment and in the main of increasing output, but they have also been years of rising prices.

2. Prices have been rising since 1934, but the price rise since the end of the war has been exceptionally big and prolonged for times of peace. The average rise has been some 4 to 5 per cent. per year.

3. The rise in the price of consumer goods is particularly important because of its effect on the cost of living index and thus on wage claims. Food prices down to 1955 rose very fast, and food is a particularly important item in the index. The rise in food prices affects some groups of the population more than others, pensioners being the group most affected.

4. The fact that prices have risen means that the money paid out for all goods and services produced and imported must have risen faster than the actual quantities of home-produced goods and services and imports.

5. The increase in the cost per unit of home-produced goods and services and imports for the year 1956 compared with 1946 is attributable as to 49 per cent. to extra wages, 19 per cent. to extra profit income, 19 per cent. to higher import prices, and 13 per cent. to extra indirect taxes.

6. Wages and salaries dominated the picture mainly because they were substantially bigger than the total of profit income at the commencement of the period, but it is to be noted that whereas from 1946 to 1952 wages and salaries and profit income rose roughly in line, from 1952 to 1956 wages and salaries rose appreciably faster. The figures for the first three quarters of 1957 carry on the 1952–56 story.

7. The overall increase in production in the period 1946–56 is estimated on average at about 3 per cent. per year, whereas the rise in wages and salaries is estimated at just under 8 per cent. per year and the rise in profit income at just under 7 per cent. per year.

8. The gap between the rise in income and the rise in output has necessarily been very different for different industries.

9. Productivity, by which we mean production per man, has increased over the period 1946–56 by about 2¼ per cent. per year. Average earnings over the same period rose about 7 per cent per year.

10. In considering these figures, it should be borne in mind that capital as well as labour is used in the process of production and that the stock of capital has risen faster than the labour force.

11. The movements of the different types of income can be summed up in this way:

(i) Wages and salaries, both since 1938 and 1948, have risen faster than the total of net profit income.

(ii) The average wage-earner and the average salary-earner in manufacturing industry have both had a real gain in their standard of living in the last few years; the gain has been greater for the wage-earner than for the salary-earner.

(iii) As regards income from self-employment, the total sums paid out to professional persons working on their own account and to other sole traders and partnerships have risen comparatively slowly throughout. Farmers' total incomes rose very fast from 1938 to 1948; since then, they have risen more slowly than wages and salaries.

(iv) Rent, after allowing for depreciation, fell sharply from 1938 to 1948, and since then, though it has risen, it has not recovered the share it had in the national income before the war.

(v) Company profits rose about as fast as wages and salaries from 1938 to 1948, and again from 1948 to 1956.

(vi) Dividends are a much smaller share of profits than they were before the war, and have not recovered their pre-war real value. This is also true of the total of personal incomes from rent, dividends and interest together.

(vii) The sum paid out in old age pensions and other public grants rose rather faster than wages and salaries from 1938 to 1956. The latest increase in the pensions rates makes the standard pension worth slightly more, in real terms, than in 1946.

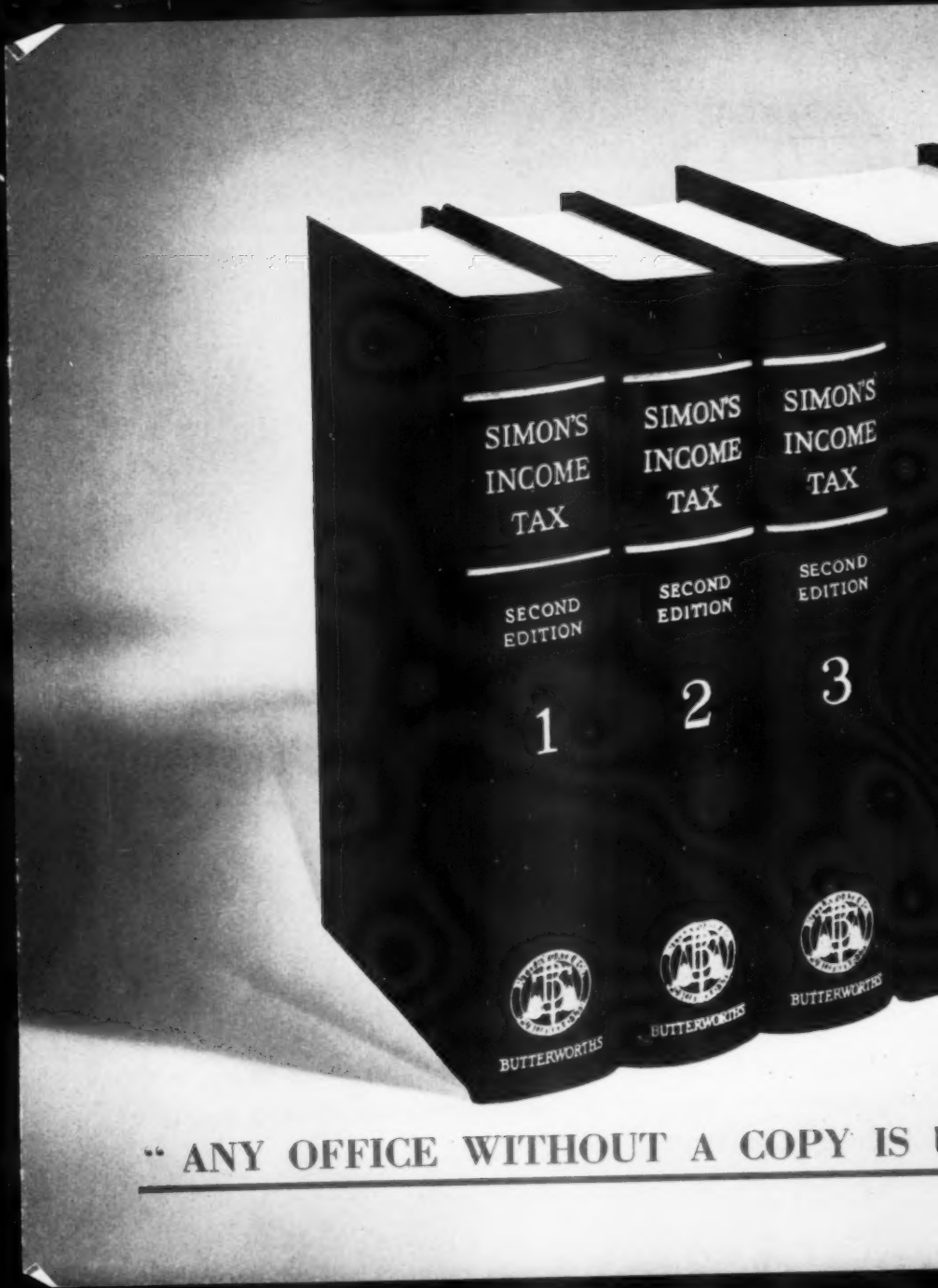
Conclusions

12. The country has pursued during the post-war period a number of objectives arising naturally from the circumstances of the time, and in themselves desirable, but making in the aggregate a greater demand on the industry and thrift of its citizens than they have had the power or the will to satisfy. This has shown itself in an abnormal pressure of monetary demand for both consumer and capital goods and services, which has been the main cause of the rising trend of prices and money incomes.

13. The expansion has been assisted by a plentiful supply of money and by the pursuit by governments of "full employment" policies.

14. Increases in import prices also had an inflationary effect, but this has not been an important factor since 1951.

15. Wage claims have been frequent throughout the period, and in support of their claims trade unions have naturally relied on the considerable increases in the cost of living. At certain periods in the past the abolition or reduction of sub-



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sidies has been an important factor, though never a dominant one, in the rise of consumer prices. The partial decontrol of house rents is in course of exerting a similar, but smaller, effect.

16. Although the main cause of the rise in prices and incomes has in our opinion been high demand, the wage advances have chiefly been secured through the instrumentality of powerful trade unions, and the importance of their attitude will increase as the measures adopted to reduce demand take effect.

17. Our terms of reference mention "reasonable stability of prices," but this is an ambiguous term. Some people might hold that it does not preclude a slow rise of prices by 2 or 3 per cent. a year. But even such a slow rise does great injustice between different sections of the population, and if it were generally expected to continue indefinitely would hamper many kinds of business dealings, including long-term borrowing by government.

18. If attempts were made to avert these results by sliding-scale arrangements, etc., the most probable result would be to speed up the rate of price rise, which might reach disastrous dimensions.

19. It is specially important for Britain, with her great dependence on imported food and raw materials, and her consequent need for high exports, to avoid inflation, since she cannot count on her competitors indulging in it.

20. Accordingly in our opinion the objective should be to stop, not merely to moderate, the inflation.

21. We recognise that the price-level might have to be allowed to rise if:

(*a*) there were to be a sharp rise in the cost of imported goods and services, or

(*b*) the level of indirect taxation were to be raised, or

(*c*) it were decided to correct some important price distortion, e.g. if it were thought that the prices charged by some nationalised industry were too low.

22. Apart from such special cases, it is arguable that the general level of prices should actually decline gradually as productivity increases.

23. We consider the measures taken in September, 1957, by H.M. Government were justified and indeed overdue.

24. These measures must necessarily, if effective, have a tendency to slow down investment, the growth of which had already been slackening before September, 1957. This trend may be emphasised as a result of the Government's measures. There is no sign so far of any reduction in expenditure on projects already in progress, but it may well be that private investment plans are being revised. Expenditure on most of the important public investment programmes is being maintained.

25. We have called attention to various matters which we think the Chancellor of the Exchequer should have in mind when considering the levels of direct and indirect taxation and of Government expenditure. We have not sought to tender advice as to the conclusions which he should reach.

26. The recent change for the worse in the outlook for world trade renders it all the more important that British costs of production should be kept under control. But if a severe depression in the demand for British exports should develop, very difficult questions of policy would undoubtedly arise.

27. The September measures must also tend to lead to some rise in unemployment, but the figures available do not suggest that the rise has been such as to afford an argument for any general relaxation of the restrictive pressure. The percentage of unemployment has risen only from 1.2 per cent in January, 1956, to 1.8 per cent. in January, 1958. It would not be alarming if it went somewhat higher.

28. We believe that the decline in the intensity of demand will tend to moderate the insistence with which wage-claims are pressed. Claims may be based on the increase in the retail prices index since the previous settlement. During 1957 the index rose by over 4½ per cent. A general rise in wage-rates on this scale would exceed the rate of growth of productivity in any recent year; it would produce an upward pressure on prices and risk damaging our external position. Moreover, it must be remembered that wage increases in recent years have regularly exceeded the rise in the cost of living. We would, therefore, hope that if any wage increases are granted in 1958, they will be substantially below the average of the last few years.

29. In general, we think it important that, in the occupations where productivity is rising fastest, wages should not be allowed to rise in full proportion to the increase in productivity. For if they did, wages elsewhere would tend to rise in sympathy, and the result would be that *average* wages would rise faster than *average* productivity, and the rise in prices would continue.

30. We further think it important that wages in any occupation should reflect not only what is happening to overall productivity, but also the conditions of demand for and supply of labour in that occupation. For in a free enterprise economy without direction of labour, this flexibility of *relative* wages is the chief means on which the country must rely to ensure the best distribution of its labour force.

31. While we appreciate the attractions of the suggestion that a precentage figure should be announced by which average money wages could increase during a year or other period without damage to the national interest, we have pointed out certain objections to the adoption of the proposal, one of which is the risk that the average might come to be treated as the minimum.

32. We have considered, but we cannot in present circumstances recommend, the reintroduction or introduction of physical controls over investment, price controls, subsidies or legislation enforcing dividend limitation or the repeal of the Rent Act of 1957.

33. Linked with the question of dividends is the question of ploughed back profits. Had industry, in the post-war inflationary period, not ploughed back a large amount of profits it would not, we think, have been able to find from the market the funds necessary to carry out the

capital investment which has in fact taken place.

34. We have mentioned the desirability of lower price levels through policies aiming at low profit on large turnover. In this connection we have suggested that the question of the power of the individual manufacturer to enforce price maintenance should be the subject of an inquiry. We have ourselves reached no conclusion on the subject.

35. We have made certain suggestions as to additional information [on the relation of profits to sales and to capital employed] which might in appropriate cases be included in the annual reports of companies.

Accountant at Large

Workers of the World . . .

SEMANTICS, WHICH MAY be defined as the science of meaning, has had profound effects upon philosophy. It might have even greater effects upon life at large if we were all grounded in its elements at school. What do we mean by freedom? What is the "referend" when we talk about patriotism, or democracy? To insist upon agreed definitions would hamstring a great number of arguments, might even save some eyes from blacking. But semantics, in so far as it removes the lazy man's props of easy, general, loose words, would make us all work harder, and so is unlikely ever to be generally acceptable.

It would have a great deal of work to do upon the general use and even more general misuse of the word "work" itself. Think for a moment (if you can without too much choler) on the words "working class." Better still, consider the word "worker," and the volumes of social history and political philosophy that are epitomised in its use today.

Right back to the days of John Ball, and before, the confusion of thought has been apparent. Man cannot eat unless the earth is farmed, and the sweat of the brow is thus the only essential to sustenance. The great gulf between the peasant wresting his hard living from the ground and the lord exacting his dues in return for the protection of his overlordship becomes a cause for rebellion as soon as the chaos of unordered society is forgotten in the years of peace; and today we see (some accountants who are in close touch with industry see it very vividly) the illusion sadly prevalent that the product of industry is the fruit only of the factory floor. Management is at best a barely necessary evil, at worst a parasitical outgrowth; commerce is almost entirely predatory; the rewards of both are grossly excessive.

The confusion goes much further than a mere dispute about how much reward each type of worker should have. That is always an arguable point. John Smith, accountant, with years of sound education and practical training now manifesting themselves in sophisticated expertise, may urge that he is worth far more to the community than any hewer of wood or drawer of water. He will admit readily enough that if dustmen were paid £5,000 a year and accountants £500 he would still not embrace a change of occupation with any enthusiasm—though he may fairly point out that he could become a dustman more efficiently than a dustman could become an accountant. But, important though it is for us all to think clearly on this question of right remuneration—the order of society in which we were brought up is not the right one merely because we liked it—it has nothing to do with the ultimate heresy, that John Smith is not a worker at all, that his dustman has the exclusive right to the title.

There was a time, and that not so long ago, when important sections of society took pride in dissociating themselves from work. Today's overtones in the word "worker" doubtless had their origin in part in the use of "working class" as a derogatory term, by those who in greater or smaller degree lived on inherited wealth, or strove to associate themselves with others so privileged. Today, as we can see all around us, the formerly privileged classes are now in the market place, earning their living (if the expression is permissible); and by an ironic twist of social development, the influx into industry and commerce of a class that formerly kept strictly aloof is tending to fill positions of management that were formerly more freely open to "lower orders"—which might or might not be the working classes. The traditional progress from clogs to mill-owning belonged, oddly enough, to the day when privilege ruled society. The levelling process has gone far, but in this regard movement has been in the other direction, with organised labour reinforcing the tendency by its reluctance to participate in management. And all of it, of course, underlining illogically the

misunderstanding of the word "worker."

The accountant who does his full day's work (which may well mean a bag of it taken home in the evening) may reasonably insist that he too is working class; and may certainly share the general reluctance to use the phrase "working class" at all, when it and its associations have become so muddled. And he will wonder, sometimes, how great a catastrophe will be necessary before this particular semantic confusion is eradicated. There is little enough prospect of a strike of the management classes, to teach the managed a salutary lesson; yet how, without one, is the full implication of the law of supply and demand to be brought home to the community at large?

Taxation

Marginal Relief on Estate Duty

MARGINAL RELIEF ON estate duty is claimable in various circumstances, all of which could occur at the same time! Estate duty is levied at the same rate on all the property passing on the death, the rate being fixed by the total net value of the whole of the property liable to aggregation (termed the "estate"). Each rate is applicable to the value of estates falling between certain prescribed limits. Thus if the net value of the estate is £22,000, the rate of estate duty leviable on all parts of that estate is 15 per cent., as the amount of £22,000 is over £20,000 but not over £25,000, and on estates falling between £20,000 and £25,000 duty at 15 per cent. is payable.

To avoid the inequity of paying (for example) 15 per cent. if the estate is valued at £25,000 and 18 per cent. if the estate is worth £25,001, a marginal relief was provided in the Finance Act of 1914. Under the provisions of Section 13 (1) of that Act, if the net value of an estate for estate duty purposes exceeds the figure at which a lower rate of duty is payable, the maximum duty payable is:

(*a*) the amount payable at the lower rate as if the value of the estate was equal to the maximum sum at which such lower rate is payable, *plus*

(*b*) the excess of the value of that estate over that maximum sum.

Illustration

The estate of Phildown deceased was valued at £52,000. If no marginal relief were available the estate duty payable would be 35 per cent. of £52,000=£18,200. As a result of marginal relief the amount payable is reduced to £17,500 as follows:

	£
31 per cent. on £50,000 =	15,500
Excess over £50,000	2,000
	17,500

By the marginal relief the beneficiaries of the estate are saved £700.

The Finance Act, 1954, includes another provision whereby marginal relief may be given. Under the provisions of Section 33, Finance Act, 1954, if the property passing on death includes settled property as well as other property and the value of the other property exceeds £10,000, the duty on the other property must not exceed:

(*a*) the excess of the value of that property over £10,000, *plus*

(*b*) the duty which would be payable if the value of each part of the other property was reduced rateably by the amount of the excess.

For this purpose the term "settled property" means: "any settled property other than property comprised in a settlement made by the deceased or made, directly or indirectly, at his expense or out of funds provided by him, and other than property not so comprised of which he has been competent to dispose and has disposed by the exercise by his will or otherwise of a power conferred by the settlement, or which devolves on his personal representatives as assets for payment of his debts."

Illustration

Settled property valued at £900,000. Other property consists of free personalty, £18,000; gifts *inter vivos* liable to duty, £4,000; and free realty, £5,000. Without marginal relief the duty payable would be:

	£	£
Settled property		900,000
Other property:		
Free personalty	18,000	
Free realty	5,000	
Gifts *inter vivos*	4,000	
		27,000
Total, fixing rate of duty at 75 per cent.		927,000

Duty payable:

	£	£
On settled property, 75 per cent. of 900,000 =		675,000
On free personalty, 75 per cent. of	18,000 = 13,500	
On free realty, 75 per cent. of	5,000 = 3,750	
On gifts *inter vivos*, 75 per cent. of	4,000 = 3,000	
		20,250
		695,250

By claiming marginal relief, however, the duty on the "other property" can be materially decreased:

	£	£
Excess over £10,000=		17,000
Value of other property if every constituent item is reduced rateably	£	
Free personalty $\frac{18,000}{27,000}\times$£10,000=	6,666	
Free realty $\frac{5,000}{27,000}\times$£10,000=	1,852	
Gifts *inter vivos* $\frac{4,000}{27,000}\times$£10,000	1,482	
Duty on 10,000=		400
		17,400

The duty on the settled property will remain at £675,000 but the duty on the "other property" will be reduced by £20,250 – £17,400 = £2,850.

Had the value of the settled property been £1,100,000 double marginal relief would have arisen:

	£
Settled property	1,100,000
Other property (as above)	27,000
Total, fixing rate of duty at 75 per cent., with marginal relief	1,127,000
Duty on estate is, therefore:	
75 per cent. on 1,000,000=	750,000
Add excess	127,000
	877,000

(If marginal relief had not been obtainable, the estate duty would have been 80 per cent. of £1,127,000 or £901,600.)

The duty applicable to the settled property is $\frac{1,100,000}{1,127,000}\times$ £877,000=£855,989; the duty on the other property is $\frac{27,000}{1,127,000}\times$ 877,000=£21,011.

As shown above, by reason of the marginal relief under the provisions of Section 33, Finance Act, 1954, the duty on the other property is reduced to £17,400. The duty payable without marginal relief under the provisions of Section 13, Finance Act, 1914, and Section 33, Finance Act, 1954, is £901,600, while with relief under those Sections the estate duty is reduced to £(855,989+17,400)= £873,389, a saving of £28,211.

Section 38 (11), Finance Act, 1957, provides a further marginal relief in respect of gifts *inter vivos*. Under the provisions of Section 59, Finance (1909–10) Act, 1910, as amended by Section 33, Finance Act, 1949, no estate duty is payable on gifts to the same donee in the five years prior to the donor's death if the total of those gifts does not exceed £500 (ignoring gifts of interests in settled property). Before the Finance Act, 1957, if the total of such gifts exceeded £500 then estate duty was levied on the full value of the gifts. The rate of duty was found by aggregating the full value of the gifts with the other aggreable property passing on death. However, following the coming into force of the Finance Act, 1957 (August 1, 1957), the duty payable on gifts is not to exceed the excess of the value of the gifts over £500.

Illustration

On the death of John Henry on December 1, 1957, the property passing and deemed to pass on death was settled property £550,000; free personalty £60,000; and gifts *inter vivos* liable to duty, £600. The total value of the estate is £610,600, fixing the rate of duty at 70 per cent. The estate duty on the gifts, without the relief under the provisions of Section 38 (11), Finance Act, 1957, would be £420. Relief under those provisions means the duty is reduced to the excess of the value of the gifts over £500, namely £100.

If the estate includes agricultural property, industrial hereditaments, or plant and machinery used in a business, the calculation of the marginal relief given under the provisions of Section 13 (1), Finance Act, 1914, will be as shown in the following illustration. The rate of estate duty payable on the agricultural value of agricultural property, on the value of industrial hereditaments and on the value of plant and machinery is at 55 per cent. of the normal rates. It is important to appreciate that the relief is against the *rate* of duty, not the *amount* of duty.

Illustration

Assume that, on the death of the life tenant of settled property valued at £100,000, the other property passing consisted of free realty valued at £50,000, including land the agricultural value of which was £30,000, and free personalty valued at £86,000; aggregate property passing was £236,000. The rate of estate duty would be 60 per cent. The estate duty payable would be:

	£
Settled property, 60 per cent, of £100,000 =	60,000
Realty:	
Agricultural value (55 per cent. of 60 per cent.=) 33 per cent. of £30,000 =	9,900
Non-agricultural, 60 per cent. of £20,000 =	12,000
Free personalty, 60 per cent. of £86,000 =	51,600
	133,500

Were the value of the settled property £80,000, the aggregate would be £216,000, and the rate of duty would be 60 per cent. but for marginal relief. The estate duty payable, with marginal relief, would be:

	£	£
Total value of estate		216,000
Duty payable (ignoring the agricultural value)		
55 per cent. of £200,000 =		110,000
Add margin		16,000
		126,000
Settled property, $\frac{80,000}{216,000}\times$£126,000 .. =		46,667
Free personalty, $\frac{86,000}{216,000}\times$£126,000 .. =		50,166
Free realty (excluding agricultural value) $\frac{20,000}{216,000}\times$£126,000 .. .. .. =		11,667
Duty payable, assuming all property was agricultural on which the reduced rate of duty was payable	£	
(55 per cent. of 55 per cent.=) 30.25 per cent. of £200,000= ..	60,500	
Add margin	16,000	
	76,500	
Duty on agricultural value $\frac{30,000}{216,000}\times$£76,500 ..		10,625
Total estate duty payable		119,125

Surtax and Companies—1

THE WITHDRAWAL OF the concession known as the "Chancellor's Umbrella" in respect of accounting periods ending after August 1, 1957, means that many Boards of directors must consider whether the distributions they propose are sufficient to avoid a surtax direction.

The first consideration is to determine whether or not the company is one whose income may become liable to surtax. Section 2, Income Tax Act, 1952, provides that an additional income tax, called surtax, shall be charged on the total income of an individual in excess of £2,000. A company is not an individual, so that normally its income cannot attract surtax. But as a result of Section 245, Income Tax Act, and the succeeding Sections, a company which is under the control of five or fewer persons, and which does not distribute what the Special Commissioners consider to be a reasonable proportion of its profits so as to attract surtax in the recipient's hands, may become liable to surtax. The income will be apportioned to the persons who could have had access to it (if necessary by means of sub-apportionments through other companies). There will then be calculated the additional surtax which those individuals would have had to pay had their shares of the apportionment been added to their total income. Section 245 applies to any body incorporated in any part of the United Kingdom under any enactment, provided it is:

(*a*) under the control of five or fewer persons;
(*b*) not a subsidiary company;
(*c*) not a company in which the public is substantially interested.

"Under the control of five or fewer persons"

The company is deemed to be under the control of not more than five persons:

(*a*) if any five or fewer persons together exercise, or are able to exercise, or are entitled to acquire, control (whether direct or indirect) over the affairs of the company, and in particular, but without prejudice to the generality of the preceding words, if any five or fewer persons together possess, or are entitled to acquire, the greater part of the share capital or voting power of the company; or

(*b*) if any five or fewer persons together possess, or are entitled to acquire, either the greater part of the issued share capital of the company, or such part of that capital as would, if the whole of the income of the company were in fact distributed to the members, entitle them to receive the greater part of the amount so distributed; or

(*c*) if—

(i) on the assumption that the company is a company to which the said Section 245 applies; or

(ii) on the assumption that the company and any other company or companies are companies to which the said Section 245 applies,

more than half the income of the company (including any income which has been apportioned to it, or could on either of those assumptions be apportioned to it) could be apportioned for those purposes among not more than five persons.

In ascertaining under paragraph (*c*) whether or not income could be apportioned among not more than five persons, account is taken, where an original apportionment and any sub-apportionment are involved, only of persons to whom income could be finally apportioned as the result of the whole process of original apportionment and sub-apportionment.

For the purpose of deciding whether five or more persons are involved, the following four classes of persons are each treated as one person: (*a*) persons who are relatives of one another (husband, wife, ancestor, lineal descendant, brother or sister); (*b*) persons who are nominees of any other person, together with that other person; (*c*) persons in partnership; and (*d*) persons interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person.

As can be seen it is necessary to have at least eleven persons with equal rights as shareholders to prevent the company from coming within the provisions of Section 245, and none of those persons must be associated in the manner described in the preceding paragraph. Should there be more than eleven persons, it will not be necessary that they have equal rights, but it will be necessary to ensure that the majority of the voting power, etc., is not in the hands of five or fewer of the persons.

"Not a subsidiary company"

A company is deemed to be a subsidiary company not subject to the provisions of Section 245 if the control of that company by the beneficial ownership of shares is in the hands of a company or two or more companies to which Section 245 does not apply. For example, in considering whether Beta Limited is a subsidiary company to which the provisions of Section 245 do not apply, the position of its holding company, Alpha Limited, must be considered. If Alpha Limited is itself not under the control of five or fewer persons; or is a subsidiary company; or is a company in which the public are substantially interested (see below), then the Section 245 provisions will not apply to Beta Limited.

There is a provision that a company deemed to be under the control of five or fewer persons is not a subsidiary company (which would enable it to claim exemption) unless one of those five or fewer persons is a company to which Section 245 does not apply.

"Not a company in which the public is substantially interested"

For this exemption to apply:

(i) the public must have acquired or been allotted shares carrying not less than 25 per cent. of the voting power (not being shares entitled to a fixed rate of dividend with or without a

further right to participate in profits); and

(ii) the public must have such a holding at the end of the accounting period for which the accounts of the company have been made up; and

(iii) the shares held by the public must in the course of the accounting period have been the subject of dealings on a stock exchange in the United Kingdom and the shares must have been quoted in the official list. (It seems that the quotation need not be in the period so long as there has been one at some time.)

The term "public" does not include a company to which the Section 245 provisions apply. The public are those members of the company who do not have control of the company by voting power (*I.T. Commissioner* v. *Bjordal* (1955) A.C. 309).

(*To be continued.*)

Transferring Assets Abroad—An Excepted Case

A COMPANY INCORPORATED abroad is resident abroad whether or not it is also resident in the United Kingdom (*Gasque* v. *C.I.R.* [1940] 23 T.C. 210). To prevent avoidance of tax, Section 468 of the Income Tax Act, 1952, prohibits the transfer, without the consent of the Treasury, of the residence or business of a company from the United Kingdom to a place abroad.

On individuals—including partnerships—as distinct from companies, there is no such prohibition in terms, but Section 412 of the Act in effect severely restricts the transfer of income-producing assets to persons resident abroad, and in particular to oversea companies, in such a way that rights are acquired which either give to the resident of the United Kingdom who makes the transfer power to enjoy income from the transferred assets or entitle him to receive capital sums.

The net cast by Section 412 is very widely spread and judicial interpretation has extended it even further. Moreover, whereas in law generally, including income tax law, it is the "form" of a transaction which is material rather than the "substance" (*C.I.R.* v. *Duke of Westminster* [1936] 19 T.C. 490, and *Re Austin Motor Company Ltd's Agreements* [1957] 3 All E.R. 62), Section 412 specifically provides that all benefits which may at any time accrue to the individual as a result of the transfer . . . must be taken into account irrespective of the nature or form of the benefits. Indeed, it seems that until the recent case of *Fynn* v. *C.I.R.* [1958] 1 All E.R. 270, hardly a single decision of the courts related to the Section had gone wholly in favour of the taxpayer.

The Section itself contains two charging sub-Sections: (1) and (2), the first on income and the second on capital sums. It is followed by two other Sections, providing for the tax chargeable under Section 412 to be charged under Case VI of Schedule D, and giving the Special Commissioners wide additional powers to obtain information in connection with assessments from *any person*.

Sub-Section (1)

An individual is brought within the ambit of sub-Section (1) if, by means of any such transfer as that referred to, either alone or in conjunction with "associated operations," he acquires any rights by virtue of which he has, within the meaning of the Section, "power to enjoy," whether forthwith or in the future, any income of a person resident or domiciled out of the United Kingdom which, if it were income of that individual received by him in the United Kingdom, would be chargeable to tax. In such event that income is deemed to be income of the transferor for all the purposes of the Act.

"Individual" includes wife or husband, but not widow or widower, or a group of individuals of which the person assessed is one (*Lord Vestey's Executors* v. *C.I.R.* [1949] 31 T.C. 1, 80).

It is not necessary for the assets themselves to be physically transferred from the United Kingdom to a place abroad, or for the income arising from the transferred assets to be remitted to an individual in the United Kingdom, or for the transferee to be non-resident at the time of the transfer. It is sufficient if the transferee becomes non-resident after the transfer (*Congreve* v. *C.I.R.* [1948] 30 T.C. 163) and for assets to be transferred from a partnership abroad to a non-resident company abroad, as in *Latilla* v. *C.I.R.* [1943] 25 T.C. 107, provided the transfer is effected by or on the instructions of a person resident in the United Kingdom.

Associated operation

"Associated operation" is defined by sub-Section (4) as an operation of any kind effected by any person "in relation to" (i) any of the assets transferred; or (ii) any assets representing (directly or indirectly) any of the assets transferred; or (iii) income arising from such assets; or (iv) assets representing (directly or in-

directly) accumulations of income arising from such assets. Thus, where assets were transferred to a Canadian company in consideration for shares in the company, both a subsequent settlement of certain of the shares and a residuary gift in a will comprising further shares were associated operations (*Bambridge* v. *C.I.R.* [1955] 36 T.C. 313). In *Congreve* v. *C.I.R.* (*supra*) it was held that the act of the individual in question in leaving the United Kingdom and becoming resident abroad was an associated operation, and in *Corbett's Executors* v. *C.I.R.* [1943] 25 T.C. 305, that the time which elapses between the transfer and an associated operation is immaterial.

Power to enjoy

By sub-Section (5) an individual is deemed to have "power to enjoy" (under sub-Section (1)) income of a person resident or domiciled out of the United Kingdom if:

(*a*) at some point of time the income (whether in the form of income or not) is calculated to enure for the benefit of the individual, or

(*b*) the receipt or accrual of the income operates to increase the value to the individual of any assets held by him or for his benefit, or

(*c*) the individual receives, or is entitled to receive, any benefit, either from the non-resident person's income or out of other moneys that have become available by reason of the effect of associated operations on that income, and on any assets which directly or indirectly represent that income, or

(*d*) the individual becomes entitled to the beneficial enjoyment of the income by means of the exercise of any power of appointment, or of revocation, vested in himself or any other person, or

(*e*) the individual (except in a fiduciary capacity) is able to control, directly or indirectly, the application of the income.

It was pointed out by Lord Simonds in *Lord Vestey's Executors* v. *C.I.R.* (*supra*) that if it is sought to bring a case within (*a*) or (*b*) above, there must be an explicit finding of fact to that effect by the Special Commissioners. The amount of the income deemed to be that of the individual assessed is not limited, however, to the benefit derived from the income by virtue of the power to enjoy (*Lord Howard de Walden* v. *C.I.R.* [1942] 25 T.C. 121).

Sub-Section (2)

Sub-Section (2) provides that if a resident in the United Kingdom receives, or is entitled to receive, a "capital sum," which means a loan or repayment of a loan, or any other sum paid or payable otherwise than as income and not for full pecuniary consideration, and there is any connection between such receipt and a transfer of assets or any associated operation, then any income which, by virtue of the transfer, has become the income of a person resident or domiciled outside the United Kingdom is to be treated as income of the United Kingdom resident.

Since "power to enjoy" is linked with sub-Section (1) but not with sub-Section (2), sub-Section (1) may be escaped because there is, for instance, no dealing with any income of a non-resident person or no increase in the value of any assets.On the other hand, there may be an escape from sub-Section (2) only to be caught by sub-Section (1). Thus, in *Latilla* v. *C.I.R.* (*supra*) the United Kingdom resident transferred her shares in an oversea partnership to a non-resident company, in return for shares and non-interest-bearing debentures in the company, which declared no dividends and applied its profits in the redemption of the debentures. It was held that the individual thus had power to enjoy the income of the company, and a similar decision was reached in *Lee* v. *C.I.R.* [1941] 24 T.C. 207, where the assets in question were promissory notes. It having been held in *Lee* v. *C.I.R.* that sums received by an individual in consideration for a transfer of assets are not a capital sum within the meaning of sub-Section (2), neither the debentures nor the promissory notes were within that provision, but sub-Section (1) applied to both types of assets for the reason that possession of the assets gave the possessor power to enjoy the income of the oversea company.

Unpaid consideration

In *Ramsden* v. *C.I.R.* [1957] 50 R. & I.T. 662 the circumstances were rather different, but the result was the same. The taxpayer, who was ordinarily resident in the United Kingdom, on three occasions between 1939 and 1947 transferred shares to a company resident abroad. There were no vending agreements between the taxpayer and the company and he allowed the consideration for the transfers to remain unpaid. In the balance sheet of the company he appeared as a creditor for the face value of the shares, but in two minutes of directors of the company passed when he was not present his account with the company was described as a loan account. In 1953 the company received a dividend on the transferred shares. It was contended by the Crown that the sum owing by the company to the taxpayer was a capital sum within sub-Section (2) and that the income of the company for 1952/53 was to be deemed to be income of the taxpayer by virtue of that provision; or, alternatively, that the taxpayer had power to enjoy the income under sub-Section (1).

The Special Commissioners confirmed the assessment on the ground that the taxpayer's account with the company was a loan account and that, accordingly, sub-Section (2) applied. Mr. Justice Harman, however, said that a vendor selling property to a purchaser could not be said to lend him the unpaid portion of the purchase price (*C.I.R.* v. *Port of London Authority* [1923] A.C. 507; *Potts' Executors* v. *C.I.R.* [1951] 32 T.C. 211), while the two minutes of the Board of directors were merely instances of giving the taxpayer's account a wrong label, which could not turn the account into that which it had not been (*Waterlow* v. *Sharp* [1869] L.R. 8 Eq. 501). The taxpayer, however, though not a shareholder or director of the company, had a right to recover his debt from the company, and that was an asset held by him the value of which was increased by anything (in this case the dividend) tending to increase the

value of the company. He therefore had power to enjoy income within the meaning of sub-Sections (1) and (5) (b).

Loan must be connected with transfer or associated operation

In *Fynn* v. *C.I.R.* (*supra*) the taxpayer registered a company in the Republic of Ireland and in 1948 sold to it securities worth £35,000, leaving the purchase money unpaid. In 1949 the company issued shares in satisfaction of the debt to the taxpayer, who settled them upon the trusts of a settlement governed by Irish law. Later, the company charged the transferred securities to the bank and with borrowed moneys, limited to £35,000, purchased further investments in the open market. In 1952 the taxpayer lent the company £12,000 without security and free of interest repayable on demand, and that sum was paid to the bankers of the company. At the date of the loan the company had an overdraft which was near the permitted limit but there was no pressure on the company to reduce the overdraft—in fact, the loan enabled the company to make further investments. It was conceded on behalf of the taxpayer that the charge by the company to secure its overdraft was an operation associated with the transfer of securities to the company in 1948.

The Special Commissioners considered the taxpayer's right to receive repayment of his loan to be within sub-Section (2), since it was "connected with" the original transfer of assets in 1948 or the "associated operation" of charging the securities to the bank.

Mr. Justice Upjohn, however, negatived this view. He said that the word "connected" in sub-Section (2) must be given its ordinary meaning and he held that the income of the company by virtue of the transfer of securities was not deemed by Section 412 to be the taxpayer's income because: (i) neither the loan itself nor the right to receive repayment of it was, on the facts, connected with the transfer of assets in 1948 or the associated operation of charging the assets of the company to secure its bank overdraft; and (ii) the loan was not itself an operation "in relation to" any of the securities transferred by the taxpayer in 1948 or to the charge given by the company to the bank. The loan was not made for the purpose of reducing the overdraft because the bank was pressing for payment, or for the purpose of freeing assets from the charge.

It might or might not be that the taxpayer had "power to enjoy" income within the meaning of sub-Section (5) (*b*), but that sub-Section was linked with sub-Section (1) and could not be used to enlarge the meaning of sub-Section (4), which defined "associated operation." It was necessary to consider each sub-Section of Section 142 separately, except where it defined or amplified another sub-Section, and not to regard one as colouring the sense of another.

Conclusion

If income is chargeable to tax under Sections 412 and 413 of the 1952 Act the usual deductions and reliefs are to be allowed, and if any of the income has already borne tax by deduction or otherwise, it is not to be charged again. If charged to tax as deemed income it is not to be charged again under the general provisions of the Act, if subsequently received by the individual concerned.

Moreover, it is expressly provided that sub-Sections (1) and (2) of Section 412 shall not apply if the individual shows to the satisfaction of the Special Commissioners either:

(*a*) that the purpose of avoiding liability to taxation was not the purpose or one of the purposes for which the transfer or associated operations or any of them were effected; or

(*b*) that the transfer and any associated operations were *bona fide* commercial transactions *and* were not designed for the purpose of avoiding liability to taxation.

Test (*a*) will fail to be satisfied if any one of the purposes for which the transfer or any associated operation was effected was the avoiding of liability to taxation, which means that each individual operation has to satisfy the test (*Cottingham's Executors* v. *C.I.R.* (1939) 22 T.C. 344; *MacDonald* v. *C.I.R.* (1940) 23 T.C. 449). The burden of proving absence of a purpose of avoiding liability to taxation is on the taxpayer (*Corbett's Executrices* v. *C.I.R.* (1943) 25 T.C. 305).

Test (*b*) is twofold in character. A "*bona fide* commercial transaction" is not defined, but the expression may be compared with the words "transaction or transactions . . . entered into for *bona fide* commercial reasons" in Section 32 (6) of the Finance Act, 1951, which relates to profits tax clearance. While a superficially commercial basis will clearly be insufficient to exonerate a transaction under test (*b*) if the main purpose is to avoid liability to taxation, it will not be necessary to eschew all tax avoidance so long as the avoidance is purely incidental to the transaction and not one of the main purposes in mind or, in fact, the main benefit which might be expected to accrue from the transaction. Where, therefore, a transaction qualifies to be treated as "*bona fide* commercial"—difficult though that particular status may be of precise ascertainment—the further test under (*b*) (whether or not it is designed to avoid liability to taxation) may well prove less onerous than the complete test under (*a*), and thus give a genuine commercial transaction a balance of advantage over a non-commercial transaction.

One further point should be noted: in *Sassoon* v. *C.I.R.* (1943) 25 T.C. 154 it was held that the word "taxation" includes death duties, thus over-ruling in this respect the decision in *MacDonald v. C.I.R.* (1940) 23 T.C. 449.

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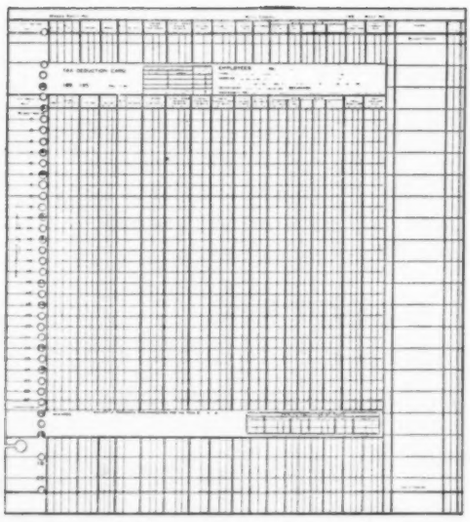

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Taxation Notes

Whose is the Income Apportionable to Capital when a Death Occurs?

The answer to the question is that income charged under Schedules A and B and excess rents and profits from furnished lettings are apportioned on a day-to-day basis, but there is no apportionment of other income for income tax purposes—the income rests where it falls.

Section 148, Income Tax Act, 1952 (Miscellaneous Rule 1 of the 1918 Act) says that tax under Schedule D is to be charged on and paid by the persons receiving or entitled to the income in respect of which tax under that Schedule is directed by the Act to be charged.

So far as assessments under Cases I and II of Schedule D are concerned, the business will normally be assessed as ended on the death. The only exception is where a previous owner remains an owner (that is, on a partnership change) and all the old and new owners (the deceased's personal representative representing him) sign a notice requiring assessments to continue as if there had been no change. In that event, it will be the deceased's share of the assessment that becomes his income to the date of death. There is still no apportionment of the deceased's income; it is a division of a firm's assessment to find the deceased's income.

Under Cases III, IV and V, there will be cessation at the date of death but no apportionment of interest, etc., receivable after the death. Only income which was due and payable prior to the death is that of the deceased; for example, if a holder of 3½ per cent. War Loan died on November 15, 1957, the half year's interest due on June 1, 1957, would be his income but none of the interest accrued between that date and November 15, 1957, could be treated as his income, since he never acquired a right to it. The interest due on December 1, 1957, would be income of the executors as such and in due course of the beneficiaries to whom it passed. Interest due on the date of death is the deceased's income.

Similarly, it was held in *C.I.R.* v. *Henderson's Exors.* (1931) 16 T.C. 282, that dividends and interest taxed at source become income of the deceased only if they fell due and payable not later than the date of death. No right to a dividend can emerge until the dividend is declared. The fact that a portion may be due to capital has no income tax consequences except that for 1956/57 onwards in ascertaining the surtax liability of any person having an absolute interest in the residue of an estate, the estate duty appropriate to such capital portion may be grossed up by reference to the standard rate of income tax, and the gross equivalent is allowed as a deduction from total income for surtax purposes.

Similarly annual payments accrued to the date of death are not deductible from the deceased's income unless actually due for payment by that date (*Rigden's Exors.* v. *C.I.R.* (1934) 19 T.C. 474).

Maintenance Claims—Farmhouses

In the ordinary way, relief for maintenance, repairs, insurance and management of land or houses cannot be given on an amount in excess of the net annual value of the property (*Crompton* v. *Campbell*, 1925, 9 T.C. 224). There are two exceptions. The first is if an excess rent is assessed on an immediate lessor under a short lease; the limit is then the amount of the net annual value plus the Case VI assessment on the excess rent (Section 175 (3), Income Tax Act, 1952).

The second exception is in respect of claims for maintenance, etc., on agricultural land. In these cases, the excess of the maintenance claim over the net annual value plus any excess rent assessment is to be set against any other agricultural income and the balance (if any) can then either be carried forward against agricultural income or claimed as a deduction against any other income of the year of assessment in which the excess arises. Notice to set against other income must be given within one year from the end of the year of assessment (Sections 313, 324, *ibid.*).

Section 313 does not refer specifically to a farmhouse but to units of assessment and it provides, in effect, that where units of assessment included in the estate are used partly for the purposes of husbandry and partly for other purposes, there can be a restriction of relief to the proportion of the use for husbandry. Where:

(*a*) in England and Wales a farmhouse, being a part of a unit of assessment, has been specially rated as an agricultural dwelling house, or in Scotland given agricultural derating relief; or

(*b*) where the occupier of a farmhouse is primarily engaged in farming and the accommodation is not out of proportion to the land farmed,

the Inland Revenue does not normally contend that the house is used partly for husbandry and partly for domestic purposes but is prepared to treat the farmhouse as occupied wholly for the purposes of husbandry.

Where, however, either the occupier is not primarily engaged in farming the land attached to the house, or the accommodation and amenities of the house are out of proportion to the land farmed, the Revenue takes the view that relief can be restricted to the proportion used for husbandry.

Economy?

Those who have dealings with the Inland Revenue cannot be convinced that big economies are impracticable. As examples, consider the following correspondence about surtax for 1955/56.

January 21—Extract from letter from Special Commissioners to accountants:

Total income, less charges, as assessed to surtax	£..
Add Building society interest over-allowed by H.M. Inspector of Taxes, —— District	£10

January 22—Accountants to Special Commissioners:

. . . H.M. Inspector of Taxes . . .

had given an estimated allowance of £10 for building society interest. The mortgage . . . had in fact been redeemed on April 4, 1955. This over allowance . . . merely affects the amount payable under Schedule A and does not affect the surtax position as . . . none was allowed in your computation. We have forwarded the pay slip . . . to our client and have asked him to pay the sum of £.... (the corrected amount due).

February 7—Special Commissioners to accountants:

. . . the Special Commissioners . . . propose that the surtax assessment for 1955/56 in the sum of £.... should be adjusted to £.... as shown below, and they would be glad to know whether you agree.

Total income, less charges, as shown in the Commissioners' letter of January 21	£..
Deduct: Building society interest as added in the letter	£10
	£..

February 11—Accountants to Special Commissioners:

. . . We agree your proposed adjustment to the surtax assessment . . . 1955/56.

(This letter was essential or follow-up letters for agreement would have arrived!)

February 13—Special Commissioners to accountants

The Special Commissioners have received your letter of February 11 and note your agreement . . .

The tax position is as follows:

Surtax on the agreed amount	£..
Less amount already paid	£..
Now payable	£..

The Commissioners will be obliged if you will arrange payment of the sum due to . . . etc.

A payslip to accompany the remittance is enclosed.

For the purpose of any charge to interest under Section 495, Income Tax Act, 1952, the date of your letter referred to above will be regarded as the date on which the above tax became due and payable.

Profits Tax—Distributions in Controlled Companies

If a company is one in which the directors have a controlling interest, the gross relevant distributions (G.R.D.) for any chargeable accounting period (C.A.P.) consist of the total of the following, so far as paid to or for the benefit of members of the company:

(1) Dividends declared not later than six months after the end of the C.A.P. expressed to be paid in respect of the whole or a part of that period. (The Commissioners of Inland Revenue (C.I.R.) may extend the period of six months where the dividend could not reasonably have been declared within that period.) (Sections 35, 36, Finance Act, 1947.)

(2) Cash bonuses and assets distributed in kind (*ibid.*).

(3) Any amount applied, whether by way of remuneration, loans or otherwise, for the benefit of any member (*ibid.*). The term "member" is not defined and must, it seems, have the meaning set out in the Companies Act, 1948, Section 26—that is, any person who agrees to become a member and whose name is entered on the register of members. Any loan to a member is caught (*C.I.R.* v. *Chappie* [1952] 34 T.C. 509). A sum paid for an asset which is its commercial value may not be caught (*C.I.R.* v. *Lactagol* [1954] 35 T.C. 230). Any element of bounty on such a purchase would be a benefit. Under this heading must be included annual payments made to members of a company to the extent that such annual payments are not allowed as deductions in calculating profits, either because they are made to directors (other than whole-time service directors) (Paragraph 4, Schedule 4, Finance Act, 1937) or because they are not paid out of the profits of the trade (*ibid.*)—for example, interest charged to capital (Cf. *Central London Railway* v. *C.I.R.* [1937] A.C. 77).

(4) A reduction of capital to the extent that the capital consists of shares issued as fully paid or to the extent that they were paid up by the capitalisation of any "distributable sum" since April 6, 1949 (Section 31, Finance Act, 1951). "Distributable sum" means any sum that could be used as a distribution under (1), (2) or (3) above (*ibid.*).

(5) Capitalised profits used to pay up shares where the company has reduced its capital since April 10, 1951 (*ibid.*).

For the purposes of (4) above and (5), "capital" includes loan capital (*ibid.*).

(6) (*a*) Any amount applied after April 18, 1956, in excess of the nominal amount of a reduction in share capital; (*b*) the excess of any amount applied after that date in repaying a loan over the net amount or value received by the borrower. For the purposes of arriving at (*a*) and (*b*), an amount applied out of share premium account is left out of account. Moreover, in both cases, a payment under an agreement made before April 16, 1947, of a premium on redemption of Preference shares or of a loan, is exempted from the provisions (Section 31, Finance Act, 1956).

Except as provided in (4) and (5) above and (6), any repayment of borrowed money or of share capital is not a G.R.D.

(7) In the case of the last chargeable accounting period in which the trade or business is carried on, so much of a distribution (other than a dividend declared within six months —or longer period allowed by the C.I.R. such a dividend *being* already a G.R.D.) made after the end of the period as is not a distribution of capital.

Subject to the provisions already mentioned above, the amounts treated as distributions of capital cannot exceed the total nominal amount of the paid-up share capital plus any share premiums received in cash when the shares were issued. (Section 35, Finance Act, 1947.)

On an amalgamation or reconstruction of a company under which the trade or business of a company is transferred to a second company wholly or mainly for shares in that second company, the two companies can jointly elect (by notice within six months of the transfer or any longer time the C.I.R. may allow) that the distribution of the shares to the members of the first company shall not be deemed to be a G.R.D. and that the second company shall take over the contingent liability

arising out of non-distribution relief already given to the first company.

In a case where such a notice had been given, but the old company retained a sum of cash, the balance of which, after paying liabilities and expenses, the liquidator distributed to the members, it was held that the distribution was a distribution of the assets of the company and not a repayment or return of capital within the meaning of Section 31, Finance Act, 1951, and so was not a G.R.D. within Section 35, Finance Act, 1947 (*C.I.R.* v. *Pollock & Peel* [1957] 36 A.T.C. 105). Even had it been a distribution within Section 31, it was less than the paid-up share capital within Section 35. It appears that any excess over the paid-up share capital would have been a G.R.D.

Partnership Changes

The law as it stands today is that on any change in ownership of a business, the profits must be assessed as if there were a cessation and commencement of a new business on the date of the change. To this rule there is one exception, in that if a person who was owner or part-owner before the change continues to be an owner or part-owner after the change, notice may be given (within the twelve months after the change) to carry on being assessed as if there had been no change. The notice must be signed by all those who were owners before the change and all those who are owners after the change; the personal representative signs for a deceased.

Any change in a partnership comes under this provision and it is well to have a clause in the partnership agreement that a partner must sign such a notice if all the other partners require him to do so, in return for which he will be indemnified by them against any increase in his income tax and surtax liability.

Prior to 1953/54, the position was that there was no change in the basis of assessment unless notice was given to be assessed as a cessation and commencement of a new business. By having two changes in the same or successive years of assessment (thus involving three different partnerships) it was possible to leave out of assessment a profit which exceeded the normal, since only the second and third partnerships could be the subject of adjustment of the last and penultimate assessments; no increase could be made on the first partnership (*Osler* v. *Hall & Co.*, 1933, 17 T.C. 68).

As from 1953/54, the Revenue have the right to go back to the first partnership (Section 19, Finance Act, 1953). They cannot go back to 1952/53, however.

There can still be a loss of tax to the Revenue where accounts are made up to a date early in the year of assessment and the changes occur in successive years. Consider these figures of an old established partnership of A and B.

Accounts to April 30		*Profits* £
1954		10,000
1955		14,000
1956		40,000
	C admitted a partner on May 1, 1956	
1957		16,000
	A retired on May 1, 1957	
1958		20,000

If the law remains unchanged, the following will be the assessments (ignoring fractions of months):

(1) If no notice is given on either change, all assessments will be based on the profits for each year:

			£	£
1955/56 on	A & B	£10,000, increased to 1/12th × £14,000 + 11/12ths × £40,000		37,833
1956/57	A & B	1 month, 1/12th × £40,000	3,333	
	A, B & C	11 months, 11/12ths × £16,000	14,667	
				18,000
1957/58	A, B & C	1 month, 1/12th × £16,000	1,333	
	B & C	11 months, 11/12ths × £20,000	18,333	
				19,666
1958/59*	B & C	.. ..		20,000
1959/60*	B & C	.. ..		20,000
				115,499

* These assessments could be adjusted to the actual profits of those two years.

(2) If notice is given on both changes, all assessments will be based on the preceding year's profits:

			£	£
1955/56	A & B	.. ..		10,000
1956/57	A & B	1/12th × £14,000	1,667	
	A, B & C	11/12ths × £14,000	12,333	
				14,000
1957/58	A, B & C	1/12th × £40,000	3,333	
	B & C	11/12ths × £40,000	36,667	
				40,000
1958/59	B & C	.. ..		16,000
1959/60	B & C	.. ..		20,000
				100,000

(3) If notice is given on the first change but not on the second:

			£	£
1955/56	A & B	as in (2)		10,000
1956/57		becomes the penultimate year for the second change, but 1955/56 is untouched.		
1956/57	A & B	as in (2) £1,667; increased as in (1) to 1/12th × £40,000	3,333	
	A, B & C	as in (2) £12,333; increased as in (1) to 11/12ths × £16,000	14,667	
				18,000
1957/58	A, B & C	as in (1)	1,333	
	B & C	.. ..	18,333	
				19,666
1958/59*	B & C	as in (1)		20,000
1959/60*	B & C	as in (1)		20,000
				87,666

* See note to (1) above.

Quite apart from the variation in assessments, a further important point must be borne in mind—namely, that in the case where notice was given on both changes, C had to bear income tax and surtax on his share of an assessment which greatly exceeded any income he enjoyed. He might reasonably expect an indemnity for the tax on the difference, and this indemnity it would probably pay A and B to give him. Here is another instance of the need for bringing in assessment on the actual profits of each year.

Beneficial Occupation

Section 18, Finance Act, 1957, may have more far-reaching effects than are at first evident. An occupier can be charged if he occupies a distinct part of a house or building. If he holds that part from the landlord under a letting for a year or more rent free or at a rent less than the net annual value of that part, the landlord may require him to be treated as the person assessable in respect of that part. It appears that a single room could qualify under the Section for separate assessment.

Recent Tax Cases

By W. B. COWCHER, O.B.E., B.LITT.

Income Tax

Action for wrongful dismissal by sole managing director of company—Loss of remuneration—Whether plaintiff must give particulars of taxable income, assessments and personal allowances to which entitled—Rules of Supreme Court, Order 19, Rule 4.

Phipps v. Orthodox Unit Trusts Ltd. (C.A. October 14, 1957, T.R. 277) was the subject of a Professional Note in ACCOUNTANCY for November, 1957 (page 457) and was included in Legal Notes on page 35 of our January issue. The case was, as Jenkins, L.J., observed, a by-product of the decision of the House of Lords in *British Transport Commission* v. *Gourley* (1956, A.C. 185; 34 A.T.C. 305), noted in our issue of March, 1956, (page 105) under Legal Notes.

Income Tax

Respondent a theatrical producer and owner of all shares in one-man company—Company engaged in theatrical productions—Third party desirous of having share in particular trade venture—Payment by third party to respondent in consideration of introductions to company and to the giving of opportunity to share in profits of venture—Whether payment to respondent made for services or for right to acquire interest in venture—Income Tax Act, 1918, Schedule D, Charging Rule 1 (a), Case VI.

In a Professional Note in our issue of November last, under the heading "Split Personality" (page 460) account was given of an appellant who having made a mistake in the date of a formal vending agreement had claimed that it had been preceded by a *verbal* agreement between himself as vendor and himself upon behalf of his purchasing one-man company. Strange to say, although the merits of the two cases were entirely different, a somewhat similar position must be presumed to have arisen in **Bradbury v. Arnold** (Ch., December 17, 1957, T.R. 333). The respondent, a well-known theatrical producer, had been for some time in 1957 engaged in the production of ice shows and revues, by means of a company, Tom Arnold Ltd., in which he was the beneficial owner of the only two shares which had been issued. In September, 1957, Tom Arnold Ltd. was to produce an ice revue at the Stoll Theatre, London, which was due to start at the end of October, 1957.

A certain Major Martineau was anxious to engage in the business of producing ice shows and had been introduced to Mr. Arnold by the latter's manager. As a result, an agreement had been reached the particulars of which had been set out in two letters of September 6, 1957. The first letter, one from Major Martineau to Mr. Tom Arnold and signed by the former, recited that:

> In consideration of your introducing to me and giving me the opportunity of acquiring a half interest in the profits which may be made by the ice show to be produced at the Stoll Theatre . . . and on any subsequent tour or tours in Great Britain, I agree to pay you the sum of £9,000 and herewith enclose my cheque for that amount.

The second letter of the same day was one from Tom Arnold Ltd. to Major Martineau signed by Tom Arnold for Tom Arnold Ltd. It recited that in consideration of £1,000 "paid by you to us today" Major Martineau was to have the interest in the Stoll show mentioned in the first letter and it went on to say how the profits therefrom were to be ascertained, winding up with the statement that the major was not to be liable for any losses. This second letter was endorsed "I accept and agree the above. (Sgd.) Hubert Martineau."

An assessment upon the £9,000 had been made upon Mr. Arnold under Case VI of Schedule D as being in respect of services. Several explanations were possible of the strange method of dealing with the total of £10,000 paid by Major Martineau for his half-interest, apart from the one mentioned by the Commissioners in the stated case; but, as Upjohn, J., observed, this was a matter of history and did not seem to him to affect the transaction. The Commissioners had found that the £9,000 was part of the consideration paid by Major Martineau for his half-interest and was a capital receipt. Upjohn, J., affirmed their decision. The Crown had claimed that the amount in question was in consideration of services to be performed by Mr. Arnold and had cited *C.I.R.* v. *Duke of Westminster* (1936, A.C. 1; 14 A.T.C. 77; 19 T.C. 510). Looking at the ungrammatical first letter and the second letter, Upjohn, J., said that they really formed part of one transaction and:

> can you say as a matter of business commonsense that in and by that transaction Tom Arnold undertook to perform services? I do not think you can.

He stressed the fact that he decided the case on its own particular facts. The first letter refers to an antecedent introduction; and it would seem from the judgment that the Crown had claimed that "in consideration of receiving the sum of £9,000, Mr. Arnold on his part undertook to introduce Major Martineau to the company." Stopping there, the introduction of Major Martineau by Mr. Arnold to himself in the guise of Tom Arnold Ltd. must have been a proceeding of more than ordinary interest!

Income Tax (Tanganyika Territory)

Company—Undistributed profits—Profits distributed as dividends by company either nil or less than 60 per cent. of total income—Undistributed portions of 60 per cent. to be deemed to have been distributed as dividends—Exceptions where Commissioner satisfied that owing to previous "losses" or smallness of profits payment of dividend or larger dividend unreasonable—Whether "losses" include capital losses—Tanganyika Income Tax (Consolidation) Ordinance, 1950 (No. 27), Section 21.

The British income tax has spread all over the world and it would almost seem that anything in the nature of a "Welfare" State is impossible without it. With the advent of the tax there also comes, inevitably, the necessity for dealing with tax avoidance in its many forms; and colonial administrations are apt to secure legislative provisions similar in general intention to provisions found in the United Kingdom system. **Tanganyika Commissioner of Income Tax *v.* Williamson Diamonds Ltd.** (Privy Council, October 2, 1957, T.R. 269) arose out of the provisions of Section 21 of the Ordinance mentioned in the heading to this note. This Section was intended to deal with the avoidance of tax by non-distribution of profits by companies, a problem which was first dealt with in this country by Section 21 of the Finance Act, 1922, and is now represented by Sections 245–264 of the Income Tax Act, 1952. By Section 21 of the Tanganyika Ordinance, where, in the case of a company resident in the Territory, the Commissioner is satisfied that, within the time limit laid down in the Section, the profits distributed as dividends "increased by any tax payable thereon" are less than 60 per cent. of the total income of the company "ascertained in accordance with the provisions of this Ordinance," then he may

> unless he is satisfied that, having regard to losses previously incurred by the company or to the smallness of the profits made, the payment of a dividend or a larger dividend . . . would be unreasonable, . . . order that the undistributed portion of 60 per cent. of such total income of the company . . . shall be deemed to have been distributed as dividends among the shareholders. . . .

By Section 2 of the Ordinance, unless the context otherwise requires, "loss" in relation to a trade or business has to be computed in like manner as profits.

The respondent company had a large holding of shares in Buhemba Mines Ltd. In respect of the year ended December 31, 1950, no dividends had been declared although the total income of the company for tax purposes was £38,160. The Commissioner had made an order under Section 21 that 60 per cent., £22,896, should be regarded as having been distributed to the respondent and other shareholders. The mining company in its balance sheet at December, 1950, had shown that on "No. 1 account" there was a balance of loss amounting to £58,746 still to be written off, the total loss on the account apparently having been £146,867. The Privy Council judgment quotes from the decision of the Court of Appeal of East Africa as follows:

> The company has two mines of which one is worthless. A large sum spent on that worthless mine has been lost and is being written off. The other mine is working and producing profits. A large sum spent on developing it is rightly regarded as an asset, but no attempt has been made to show in the balance sheet or otherwise the value of the mine itself.

The Commissioner had held that "loss" in Section 21 did not include capital losses. He had been upheld by an appellate tribunal known as the Local Committee and by the High Court of Tanganyika. On appeal to the Court of Appeal of East Africa the case had been remitted to the Commissioner for a second decision on the basis of an interpretation of "losses" different from that adopted by him and by the lower tribunals. By this interpretation, "losses" would include capital losses. The Court of Appeal, however, had held that:

> the balance sheet is valueless for the purpose of estimating the company's true capital position.

and in the judgment of the Privy Council it is declared that "there can be no doubt that these views are correct."

> Both the Courts in Africa have held, and it is clear to their Lordships, that the respondent has failed to establish that the company sustained a loss of capital, and as this is the only loss the respondent sought to establish it has not established a loss of any kind whatever.

In these circumstances, their Lordships held that the appeal failed and must inevitably have failed if, as ordered by the Court of Appeal, it was sent back to the Commissioner. Whilst it was held to be unnecessary to decide whether under Section 21 the Commissioner should take capital losses into account, their Lordships held, *obiter*, that the word "losses" in Section 21 did not include capital losses.

> The form of words used no doubt lends itself to the suggestion that regard should be paid only to the two matters mentioned (in the Section); but it appears to their Lordships that it is impossible to arrive at a conclusion as to reasonableness by considering the two matters mentioned isolated from other relevant factors.

In this connection, it is pointed out in the judgment that the statute does not say "having regard only" and that no adequate answer to the question of "unreasonableness" could be given by considering the two matters alone.

> Their Lordships are of the opinion that the statute . . . whilst making sure that "losses and smallness of profit" are never lost sight of, requires all matters relevant to the question of unreasonableness to be considered—capital losses if established would be one of them.

The judgment exemplifies the freedom of statutory interpretation enjoyed by final courts. It is based on the special wording of Section 21 of the Tanganyika Ordinance and would seem to throw no fresh light on the interpretation of "reasonable" in Section 245 of the Income Tax Act, 1952. What does, however, furnish ground for reflection is the finding that a productive mine should be entered in the balance sheet of a mining company not at cost, as is usual, but at "market value," and that whether there has been a loss of capital or not cannot be determined unless this is done and the position as regards "compensating gains" determined.

There are and have been in the past mining areas where owing to the nature of a mineral reef and the stability of values the "market value" of a mine has been within limits capable of expert calculation. Such, however, would seem to be exceptional and there is an old saying, still meaningful, that the value of a mine is at the end of the miner's pick. In the present case, their Lordships held that the task of valuation was not imposed on the Commissioner; and added that it would "moreover be, in the generality of cases, a task which a person

with the limited knowledge of the affairs of a company which can be imputed" to him could not efficiently perform.

The only further comment to be made on the case is that whilst our courts treat the decisions of the Privy Council with respect they are not bound to follow them.

Estate Duty

Policy of life assurance — Premiums payable annually for limited period—Settlement of policy—Some of premiums paid before and some after settlement—Policy fully paid 34 years before death of assured—Beneficiary absolutely entitled to policy 12 years before death of assured—(1) Whether policy kept up for benefit of donee: (2) Mortgage of policy with assurance company granting policy —Whether amount of mortgage deductible for estate duty purposes—Customs and Inland Revenue Act, 1881, Section 38 (2)—Customs and Inland Revenue Act, 1889, Section 11—Finance Act, 1894, Section 2 (1) (c).

"Shocking," as an adjective, is often used to describe bad housing conditions or criminal offences. It is possibly unprecedented for all the judges considering an estate duty problem to find it to be the appropriate description of the Crown's claim. The case was **In re Hodge's Policy** (C.A. November 13, 1957, T.R. 281), previously noted in our issue of September, 1957, at page 398. The claim was founded on Section 2 (1) (*c*) of the Finance Act, 1894, which incorporated by reference Section 11 of the Customs and Inland Revenue Act, 1889; and the issue in the case ultimately depended upon the meaning to be given to the five words italicised in the following paragraph of Section 11 (1) of the latter Act:

> The charge under the said Section [Section 38 (2) of the Customs and Inland Revenue Act, 1881] shall extend to money received under a policy of assurance effected by any person dying on or after the first day of June, one thousand nine hundred and eighty-nine, on his life, where the policy *is* wholly *kept up by him* for the benefit of a donee, nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy *is* partially *kept up by him* for such benefit.

On September 14, 1912, Mr. (afterwards Sir) Rowland Hodge took out a policy on his own life with the Royal Insurance Co. Ltd. in the sum of £10,000 with profits. Five annual premiums of £1,475 each were to be payable, and the first of these was paid upon September 14, 1912, and the last upon September 14, 1916, when the policy became fully paid. Upon September 12, 1913, the assured assigned the policy to trustees for the benefit of his son—now Sir John Hodge, the plaintiff and second baronet—conditional upon his attaining the age of 25 years. At the date of the settlement the plaintiff was an infant less than six months old. He attained the age of 25 on May 1, 1938, twelve years before the death of his father in 1950. On attaining that age he had become absolutely entitled to the benefit of the policy, which, on the death of his father, had been fully paid up for 34 years.

On the death of Sir Rowland, the Crown claimed that estate duty was leviable upon the whole of the policy moneys on the footing that they must be treated as part of the property passing on his death, although, in the words of Lord Evershed, M.R.:

> It would be difficult to imagine any species of property which had become more indubitably the plaintiff's without any limitation on his rights of any kind, sort or description.

Harman J., by reference to the decisions referred to hereunder, had found himself forced to decide in favour of the Crown, and a unanimous Court of Appeal with equal reluctance affirmed his decision. Apparently, leave to appeal to the House of Lords was not asked for. Lord Evershed, M.R., giving the leading judgment, said that the foundation of the argument of Counsel for the plaintiff was that the test presented by the Section was whether the policy was one which immediately before the death of the assured was what counsel had called a "running policy," one which immediately before the death of the assured still required premiums to be paid periodically. This construction would, of course, avoid the difficulty presented by "is" and in support reference was made to a dictum of Lord Wright in *Barclay's Bank Ltd. (Lord Devenport's Trustee)* v. *A.G.* (1944, A.C. 372), that in the case of a single premium policy the payment of the premium "had the effect not so much of keeping up a policy as establishing its operation once and for all." So, it was argued, was it in the case before him after the four premiums after the first had been paid. Lord Evershed, however, said he could not get so much out of the language of Lord Wright, and turned to the case of *Lord Advocate* v. *Inzievar Estates* (1938, A.C. 402), which he found conclusive. There, A had effected a policy on his life and after paying fourteen premiums had voluntarily assigned it to B; A, however, had paid the next four premiums falling due after the assignment and B the remaining seven falling due up to the date of A's death. It was held in the House of Lords that duty was payable on A's death upon four-elevenths of the policy moneys, the vital point of time being the date of the assignment. Here, as Lord Evershed said, the policy had after that date been wholly kept up by the donor. He pointed out, however, that in both the above-mentioned cases premiums had continued to fall due right up to the death. In his judgment, he pointed out the extraordinary ambiguities of the statutory words "is kept up," "wholly kept up" and "partially kept up;" and he referred to *In re Oakes' Settlement* (1951, Ch. 156) where Romer, J., as he then was, had to deal with a case where lump sums had been paid in commutation of future premiums and had decided in favour of the Crown although one of the arguments for the plaintiff in that case had apparently been the one put forward by the same Counsel in the present case.

As regards the second issue in the case, whether, assuming the policy moneys to be liable to estate duty, deduction could be made of loans with accrued interest made by the insurance company to the beneficiary, Lord Evershed agreed with the decision of Harman, J., that it could not and with his reasons.

Romer, L.J., who, as Romer J., had decided the *Oakes* case, said that for at least two reasons he could not accept Counsel's arguments for the plaintiff. First, because in so far as the argument was founded on the word "is" it was quite clear from the speeches of Lords Maugham and Macmillan in the *Inzievar Estates* case that the present tense merely resulted in fixing the relevant period of time as that subsequent to the donation of the policy. His second reason for non-acceptance of the argument of Counsel for the plaintiff was that as regards "partially kept up" it was plain from the language and quite manifest from the case last mentioned that the words "is partially kept up" included "or has been." Cases could, he said, be conceived where more than one interpretation could be put on the same phrase in the same Section, but they must be rare, and when it was so obvious that the word "is" includes the past as regards partially paid premiums the same conception must be applied where the policy is wholly kept up. Ormerod, L.J., agreed with his brethren that it was impossible to distinguish the case from the *Inzievar Estates* case.

The strangest feature of the case would seem to be that anyone with

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10. Policies for Partners *To provide capital on death of partner*
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experience of the incidence of estate duty under the existing law should retain the capacity for being shocked by it.

Stamp Duty

Conveyance or transfer on sale—Relief—Company owning all shares in subsidiary company—Subsidiary with heavy losses to carry forward—Contract for sale of all shares in subsidiary by principal company—Sale consideration percentage of subsidiary's losses—Documents submitted for stamping on date subsequent to date of contract of sale—Shares in subsidiary transferred to purchaser on day following—Whether principal company beneficial owner of shares subsequent to date of sale contract—Finance Act, 1930, Section 42.

There is a market for the registrations of dormant or inactive companies which have been kept upon the Companies Register with a view to sale to someone who wishes to carry on business in the guise of a company with the minimum outlay on preliminary expenses. In this market prices must have increased considerably since the enactment of the Companies Act, 1948, which by Section 4 enabled a memorandum of association to be altered and/or extended by special resolution without the necessity of applying for the sanction of the Court. In other words, it enables second-hand clothes to be made a better fit. Still, there is often more to it than a mere saving in preliminary expenses, as was shown in connection with the taxation of excess profits provisions, and there may be very considerable income tax advantage arising from the principle that a company is a legal person independent of its shareholders. **Farway Estates Ltd. *v.* C.I.R.** (Ch. December 13, 1957, T.R. 329) afforded a good illustration of this.

The appellant company, Farway Estates Ltd., immediately before January 12, 1956, owned all the shares in Parr (Builders) Ltd. The latter had an issued capital of 4,500 Preference shares of £1 and 10,000 Ordinary shares of 1s. each. It carried on the business of building contractor and, as a result of what Upjohn, J., described as a singular lack of success, had very substantial income tax losses available against future profits. This, as the judge observed, was quite an attractive asset because if a purchaser could buy "the shell" of such a company and make it earn profits in the future he could earn "some nice tax-free profits." The transaction in question was of this type. The appellant company was selling to a Mr. Peck its subsidiary, Parr (Builders) Ltd., with its income tax losses, and, as Upjohn, J., observed:

> Of course what you had to do was, to strip the company of all its assets, make it discharge all its liabilities and sell it as a mere shell with its history of income tax losses.

By an agreement dated January 12, 1956, the appellant company sold to the purchaser the whole of the share capital of Parr (Builders) Ltd. and the whole of the indebtedness of the company to the vendor in consideration of the payment by the purchaser of a sum equivalent to 12½ per cent. of the net taxation losses of Parr (Builders) Ltd. less the sum of £300. Subject to a provision for adjustment, the net taxation losses were taken as £27,000. The transaction was to be completed on January 21, 1956, but by mutual agreement this was postponed until February 29, 1956. Upon February 28, the documents carrying out the terms of the January 12 agreement transferring property of the company were submitted for stamping, and the shares had been transferred to Mr. Peck upon the following day; and the question in the case was as to the stamp duty applicable to the latter transfers.

In 1930, in furtherance of what was then called the "rationalisation of industry," it was provided by Section 42 of the Finance Act of that year that:

> (1) Stamp duty under the heading" Conveyance or Transfer on Sale"—shall not be chargeable on any instrument to which this Section applies: Provided . . .
> (2) This Section applies to any instrument as respects which it is shown to the satisfaction of the Commissioners of Inland Revenue:
> (*a*) that the effect is to convey or transfer a beneficial interest in property from one company with limited liability to another such company; and
> (*b*) that either
> (i) one of the companies is beneficial owner of not less than 90 per cent. of the issued capital of the other company; or
> (ii) . . .

and the question was whether at the time when the documents of transfer were executed the appellant company was the "beneficial owner" of the shares in Parr (Builders) Ltd. Whilst, as Upjohn, J., said, it was the legal owner, it was, he thought, a misuse of legal language to describe the appellant company as being then the beneficial owner of the shares, for it had by an absolute and unconditional contract, of which specific performance would have been granted if necessary, contracted to sell them. He held that, even taking the most technical view of the whole matter, it was not right to describe the vendor at the date of the transfer as the equitable owner. In the main, however, he said that he vested his judgment upon the words "beneficial owner" in Section 42 having to be given their "ordinary popular sense" (*English Sewing Cotton Co. Ltd. v. C.I.R.* (1947, 1 All E.R. 679)); and there could be only one answer to the question whether on February 28, 1956, the appellant company, bound by contract to transfer them upon the very next day, was then the beneficial owner of the shares in the popular or ordinary sense. He thereupon dismissed the appeal.

Tax Cases—Advance Notes

HOUSE OF LORDS (Viscount Simonds, Lords Reid, Tucker, Keith of Avonholm and Somervell of Harrow).

C.I.R. *v.* South Georgia Co. Ltd. February 27, 1958.

Their Lordships unanimously allowed this appeal by the Commissioners of Inland Revenue from a decision of the Court of Session (see ACCOUNTANCY for May, 1957, page 222).

The accounts of the company for the relevant chargeable accounting period as computed for profits tax and excluding franked investment income showed a loss of £602,000. The franked investment income for the same period was £272,000, and the gross relevant distributions £181,000. The company was assessed to profits tax on the footing that the £181,000 represented a net relevant distribution under Finance Act, 1947, Section 30 (3) and (4). Whether this interpretation was correct depended chiefly on the meaning of the proviso to Section 34 (2) of the Act of 1947. Is it a condition precedent to the operation of the proviso that there should be a profit when the franked investment income is included in the computation?

It was held that the proviso could apply where there had been a loss. A loss could be regarded as a profit of nil. The phrase "profits computed without abatement and including franked investment income" was explained. Franked investment income had to be included in computing the profits. In the result, the profits were nil and were

thus less than the distributions, and in consequence the company was rightly assessed in respect of the sum of £181,000.

COURT OF APPEAL (Jenkins, Romer and Ormerod, L.JJ.).
Carlish v. C.I.R. February 25, 1958.

A note of this case appeared in ACCOUNTANCY for December, 1957 (page 533).

Their Lordships unanimously dismissed the taxpayer's appeal and refused her leave to appeal to the House of Lords.

CHANCERY DIVISION (Vaisey, J.).
Bloom v. Kinder (H.M.I.T.). February 25, 1958.

L. Ltd. was interested in acquiring the share capital of C. & S. Ltd. The appellant, a solicitor, made certain investigations on behalf of L. Ltd., who subsequently bought the share capital of C. & S. Ltd. for £130,000. Later, L. Ltd., sent the appellant a cheque for £1,950 (being 1.5 per cent. of £130,000) which he paid into his private banking account.

In evidence before the General Commissioners, the appellant said that he had acted in the matter as a friend of a third party and without expecting payment from L. Ltd. He regarded the £1,950 as a gift. His evidence was accepted by the Commissioners who, however, confirmed an assessment upon him in respect of the sum under Schedule D, Case VI.

Vaisey, J., allowed the appeal.

CHANCERY DIVISION (Vaisey, J.).
Angel (H.M.I.T.) v. Hollingworth & Co. C.I.R. v. Cook. February 26, 1958.

The question to be decided in these cases was the date of succession to a trade. H. & Co. was a partnership carrying on the trade of papermaking. In November, 1949, the partners decided to sell the business to a limited company to be incorporated for the purpose of carrying it on. The company was incorporated in March, 1950. Agreement between the partners as to the terms of sale was reached on May 30, 1950. The agreement by which the business was sold was executed on June 9, 1950.

The taxpayers contended that, as it was originally intended that the succession should occur on April 1, 1950, that was its date. It was submitted on behalf of the Inspector that the succession did not take place before June 9, 1950.

The Special Commissioners decided in favour of the taxpayers and Vaisey, J., upheld their decision.

CHANCERY DIVISION (Vaisey, J.).
Hinton (H.M.I.T.) v. Maden & Ireland Ltd. February 28, 1958.

The taxpayer incurred expenditure on knives and lasts used with shoe-making machines. He contended that the knives and lasts were "machinery and plant" within the meaning of Chapter II of Part X of the Income Tax Act, 1952, as well as being "implements, utensils and articles" within Section 137 (*d*). The two classes were not mutually exclusive and accordingly the knives and lasts qualified for investment allowance under Section 16 (3) of the Finance Act, 1954. For the Revenue it was contended that the expenditure was on revenue account, the knives and lasts were separate chattels and were within Section 137 (*d*) and as such were not "machinery and plant."

The Special Commissioners found as a fact that the knives and lasts were "machinery and plant" and decided that the taxpayer was entitled to investment allowance. Vaisey, J., reversed their decision.

CHANCERY DIVISION (Vaisey, J.).
Venn (H.M.I.T.) v. Franks. February 28, 1958.

The Income Tax Act, 1952, provides by Section 7 (2): "The clerk to the General Commissioners for each division or his assistant shall be appointed clerk to the Additional Commissioners for the same division, and shall attend their meetings as such."

Counsel for the taxpayer, at an appeal against certain Schedule D. assessments, submitted that they were invalid because the clerk or assistant clerk had not been present at the meeting of the Additional Commissioners when the assessments were made.

The General Commissioners upheld this submission but Vaisey, J., allowed the Crown's appeal from their decision.

CHANCERY DIVISION (Upjohn, J.).
Dalton v. C.I.R. February 6, 1958.

In 1932, S. (the deceased) took out an endowment policy payable on his death or on his surviving until September 29, 1947. In March, 1942, the deceased mortgaged the policy to the Midland Bank, assigning it to the bank subject to the usual proviso for redemption. The mortgage was to secure the deceased's overdraft. His account, however, remained in credit since 1944.

The deceased's sister looked after his son, for which he paid her. In November, 1946, he told his sister that he was giving her the policy moneys. On December 29, 1946, the last premium was paid. On January 16, 1947, an officer (now dead) of the bank made a note, after either an interview or a telephone conversation with the deceased, that the deceased was sending authority for the policy money to be paid into his sister's account. (The bank had no records that this authority was received.) On September 29, 1947, the policy matured, the bank gave a discharge (as assignee) and the policy moneys were paid into the sister's account on October 3, 1947.

The deceased died on February 3, 1952. The Commissioners of Inland Revenue claimed that the gift to the sister of the policy moneys was in October, 1947, and, it being within five years of the deceased's death, was dutiable.

His Lordship held in the circumstances that the sister was not the equitable owner of the policy before February 3, 1947. The property did not pass until she received the proceeds of the policy in October, 1947.

CHANCERY DIVISION (Danckwerts, J.).
Public Trustee v. C.I.R. February 13, 1958.

The question to be decided on the Originating Summons was whether on the death of A (an executor and trustee of the late Lord Northcliffe's will) estate duty became payable on a share of the capital of the testator's residuary estate corresponding to the share of the income thereof to which A was entitled immediately before his death. Under the terms of the will, A was entitled to a proportion of the income from the residue so long as he acted as executor and trustee, by way of remuneration, in addition to his professional charges as a solicitor (which he was entitled by another clause of the will to make).

The Commissioners of Inland Revenue claimed duty under Section 1 of the Finance Act, 1894. The Public Trustee resisted the claim on the ground that A's interest in the income received by him under the will was "only an interest as holder of an office" within the terms of Section 2 (1) (*b*) of the Finance Act, 1894.

His Lordship held that the excluding words in Section 2 (1) (*b*) did not apply to property passing within the meaning of Section 1 unextended by Section 2. He also decided that A received his remuneration in the form of a share of income only as holder of an office and referred to *Dale* v. *C.I.R.* (1953) 34 T.C. 468.

The Month in the City

Markets in Doldrums

The recovery in fixed interest securities, including the Funds, continued well into the first week of February but from then on there was a tendency for prices to fall, while the decline in industrial equities became accentuated. Oil shares were acutely weak, but gold mines improved fairly steadily and, later in the month, there was some buying of speculative mining shares, other than gold. Meanwhile, discount rates continued to fall and there was a related rise in quotations for "shorts." In the last third of the month sterling, which had closed on February 18 at $\$2.81\frac{7}{8}$, lost ground steadily. As is usual, a number of factors contributed to these results, but a dominant one was the growing conviction that the recession in the U.S.A. will be considerable and may be prolonged. For light on the depth and duration of the movement the eyes of London seem to have been fixed on Wall Street. Another occurrence is no doubt the Rochdale result, indicating a political trend viewed with something like alarm in financial circles. Other factors that have tended to depress prices are the statement of the Governor of the Bank of England that we have won the first half of the battle against inflation and must now win the second; the Cohen report, with its accent on the need for restraint—and perhaps the bitterness of the Labour reaction to it—and the Government's indication that the time is not yet ripe for any real relaxation. At the same time the fact that the rate for official advances to local authorities has been dropped seems to indicate that no appreciable reaction in the Funds is expected.

Few Indications of Recession

Apart from these general factors, there is the circumstance that calls on past issues are overhanging the market and that the volume of business has dropped. There is some indication that even those with money to spare are holding back, and it is indeed difficult to say what one should buy if one wishes to be certain of avoiding any further losses, even book ones. It is this attitude which largely explains the fact that industrial Ordinary shares now stand around the lowest since mid-1954, while the dividend yield on such shares in the index of the *Financial Times* is well above 7 per cent. and the earnings ratio around 18 per cent. At the same time company reports, although often showing either lower profits or reduced dividends or both, seldom suggest more than the known fact that profit margins have been cut, while it is hard to see in the published statistics of employment, unemployment, production and exports evidence of any appreciable recession here. Probably the domestic investor, like the foreign holder of sterling, is waiting to see what will be the outcome of present wage arbitrations. It seems to be supposed that, given a reasonably active market, especially in the world at large, this country could stand a rise of around 2 per cent. in wage rates. It is even possible that this would not much affect the profits of manufacturing industry. But until one knows what the figure is to be the uncertainty is likely to continue its pressure upon industrial share prices. At the end of the month a rally developed in most sectors and the results of these and other factors, as reflected in the figures of the *Financial Times*, are a rise, between January 31 and February 28, in Government securities from 80.80 to 81.15; falls in fixed interest from 89.34 to 88.93 and in industrial Ordinary from 163.2 to 155.9; and a rise in gold shares from 68.1 to 75.6.

Atomic Insurance

It has been evident for some time that there would be at least one privately owned atomic reactor working here before the Government scheme for insurance would be ready. Lloyd's, towards the end of last year, formed a pool to tackle the new risks here and overseas and this group has been active during February in negotiating for business. In this country at least, and presumably overseas, the owners will be liable for third party risks, the proposed limit here being, apparently, £5 million. But this is for the relatively safe types of plant at present envisaged for Britain, and the pool may have to consider larger risks on other types. It is evident that this new insurance will call for a considerable amount of cover and will add appreciably to the premium incomes of those who accept it. Rates are uncertain but this is by no means the first time that the insurance industry has launched into the unknown. The development will be watched with interest.

An Australian Loan

With so many calls overhanging the market, it is scarcely surprising that February brought few new issues. One of importance was, however, an offer of £16 million 6 per cent. *Commonwealth of Australia* stock 1974–75, offered at $99\frac{1}{2}$ in conversion of the maturing 3 per cent. stock, and any remainder for cash. As the maturing stock outstanding exceeds the new issue by almost £4 million, there will in a sense be a net return of cash to the market. Nonetheless, the operation has caused a substantial turnover, mainly because the maturing loan had become a "money" stock and the holders were unlikely to accept conversion. With the market weak in the ten days between offer and final closing of the conversion right there was still a small over-subscription, applicants for over £100,000 receiving some 85 per cent. Business opened at a discount of around one-eighth point at which turnover was very slight. It later rose to par.

Good P. & O. Figures

The disruption caused by the closing of the Suez Canal and the subsequent slump in both the volume of freight offering and the rate paid caused shipping shares to be out of favour. The announcement of a really excellent result by the *Peninsular and Oriental Steam Navigation Company* therefore caused considerable satisfaction, the more so that it was accompanied by a rise of three points in the dividend, to a total for the year to September 30 last of 11 per cent. The P. & O. publish their own results and preliminary figures for five subsidiaries, of which four are shipping lines. On these only the Orient did badly, while the British India did very well, but did not increase its dividend. The General Steam Navigation did well and paid more and New Zealand Shipping, while still in the doldrums, at least did better on the year and has still to reap some benefit from the recent rises in freight rates on the New Zealand run. The result, and even more the dividend, are to be regarded as the fruits of an exceptional year and not as a guide to future performance.

Points From Published Accounts

Typefaces

The accounts of *Rockwell Engineering* are simple, but clearly laid out. Perhaps the fact that Rockwell typefaces have been used throughout has something to do with the attractive and effective appearance of the accounts! Rockwell is a type more favoured on the other side of the Atlantic than this. A pity, for readability is one of its strongest characteristics, and all too often an otherwise good presentation is ruined by choosing an over-fussy or badly emphasised type.

Canadian "Oscar" Accounts

At a time when the panel of judges is considering entries for the awards to be presented by *The Accountant* for the best and most informative set of accounts submitted, it is interesting to look at a set of accounts which has won a trans-atlantic "Oscar" given by the *Financial World* for presentation and content—those of *International Nickel Company of Canada*, for 1956. By comparison with some American accounts—those of General Motors come immediately to mind—the International Nickel presentation is starkly utilitarian. No full-colour plates are used, the only illustrations in an extensive report from the directors being a map of a new mining area in Manitoba and a graphic illustration of nickel deliveries. Yet the impact made by these accounts loses nothing by their simplicity. On the contrary, the complete absence of all the fussiness which often mars a more elaborate approach enhances readability. What would be monotony on a sheer black and white presentation is cleverly relieved by the setting of headings in a light grey, and by variations in the blackness and sizes of the type faces used. The more one looks at these accounts, the more the detailed care which has gone into them becomes apparent. Clarity is a keynote, and all figures are allowed plenty of space so that they stand out. A ten-year review of operating results appended to the accounts is a useful feature, which is finding increasing favour on this side of the Atlantic also.

Not so common in British accounts is the very full "explanatory financial section." Here, readers can see that inventories comprise $81 million of metals, finished and in process, and $34 million of supplies. These detailed items are of extreme interest to any serious student of a company, and the abundance of such "extramural" information in the accounts clearly played an important part in gaining them an award.

A small accounting point is that the order of liquidity is the reverse of that usually met with in this country. That is to say, the current assets are headed by cash, followed by marketable securities, accounts receivable, and, lastly, inventories. No distinction of reserve items is made in the balance sheet either, the common stock being supported merely by a "capital surplus" and "retained earnings and capital gains employed in the business."

A Neat Compromise

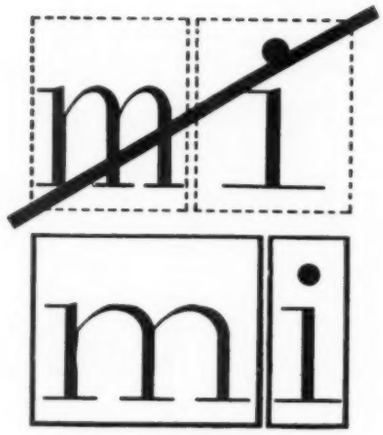
Nowadays so many companies are varying the basis on which they strike the prime profit shown in the profit and loss account that it is refreshing to come across the method adopted by *British Tabulating Machine*. The relevant extract of the profit and loss account is reproduced below.

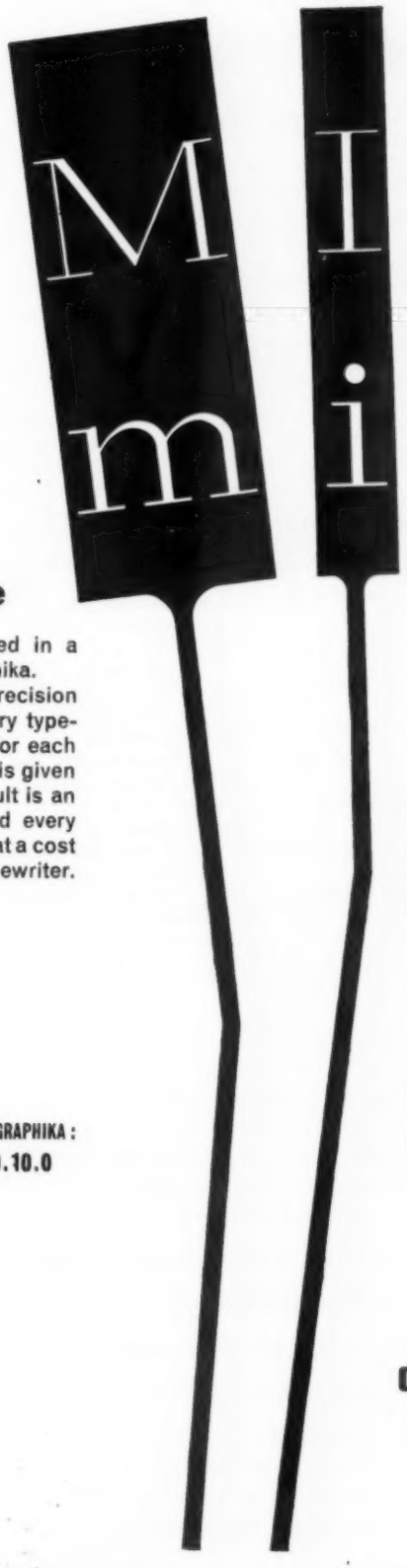
The showing of a prime profit subject only to taxation is in line with the modern trend. But there is usually a signal objection to be raised against the practice: that such important items as depreciation, which have been deducted in reaching the prime profit, are hidden away. British Tabulating, by showing these items clearly in the be-panelled notes section on the same page, has neatly avoided the criticism. Many students of accounts, the more orthodox-minded, still prefer to regard a trading surplus as one that includes depreciation and all the other items now tending to be deducted before the surplus is struck. They dislike being referred to the notes section on a later page, and then having to busy themselves adding up the various items. The British Tabulating presentation conforms to the modern trend, while not upsetting the traditionalist. While commending this presentation as a pattern for any other company which prefers to start the profit and loss account with a profit subject only to tax, we still think there is much to be said for the older practice of starting with a profit gross of depreciation and similar items.

The presentation of these accounts is up to the high standard usually expected of the company. A good quality art paper and clear-cut typefaces make for good readability. Even the balance sheet, which crowds a lot into a two-

Consolidated Profit and Loss Account

1956 £		1957 £
988,000	1. Profit for the year subject to taxation, being the balance of the items shown below	**1,182,000**
2,618,000	Revenue less expenditure other than that shown below	**3,040,000**
1,251,000	Depreciation of fixed assets	**1,424,000**
	Directors' emoluments—	£
6,000	Fees	**6,000**
43,000	Management salaries ..	**53,000**
7,000	Pensions	**7,000**
		66,000
135,000	Contributions to employees' retirement benefit schemes and pensions paid	**151,000**
188,000	Interest (gross) including debenture and loan interest, £185,000 (1956—£131,000) ..	**217,000**
£988,000	Profit for the year, as above	**£1,182,000**





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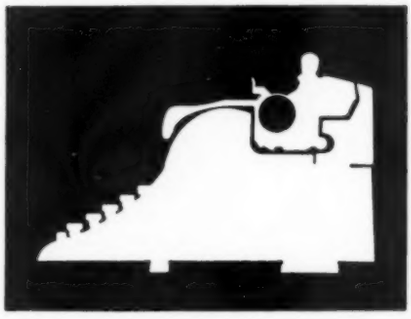
Graphika



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page spread, does not look overwhelmingly full of figures, though it combines both the parent and the group statements, largely because, sensibly, they are all given to the nearest thousand of pounds. The relevant notes are set down the right-hand margin—another good point.

A Problem from Revaluation

Turner and Newall is a business which for long has augmented the annual depreciation provision in its accounts with a transfer to "reserve for replacement of fixed assets." In the balance sheet dated September 30 last, effect has been given to a revaluation of the fixed assets of the new home subsidiaries, which exceeded the written-down book values by £5,659,351. One would have expected this disclosure to be accompanied by some adjustment in depreciation policy, and, in fact, the directors' report points out that:

> As regards the home companies, depreciation was calculated on original cost for the half year to March 31, 1957, and on the new "going concern" values for the six months to September 30, 1957.

This much is straightforward enough. What one does find puzzling is that, despite the changed basis of depreciation and although there has been additional capital expenditure during the year on a quite large scale, the charge for depreciation shown in the consolidated profit and loss account has contracted from £2,846,707 to £2,752,728. One would have expected the charge to have gone up. It seems significant that the transfer to reserve for replacement of fixed assets has been raised from £1m. to £1.5m. This higher allocation has apparently been made to recognise the enhanced value at which the assets now stand in the balance sheet—but to what extent is the shareholder to look to the transfer to reserve, and to what extent must he have regard to the depreciation charge, in seeking to find the cost of servicing the fixed assets at the enhanced book values?

Informative Accounts

The steel companies continue to excel in the presentation of their accounts. *Stewarts and Lloyds* provides a very good example of the great care and attention given to providing the maximum amount of information to shareholders, while making the accounts as stimulating as possible by the judicious use of colour photographs and coloured backgrounds to comparative figures. Stewarts and Lloyds is one of the handful of companies which provides more than the prescribed group trading figures: in addition to the group total shown in the profit and loss account, and in the balance sheet, the relevant proportions attributable to the oversea subsidiaries and to the parent and British subsidiaries are also shown. Thus there are three columns of figures for both the latest year, and the previous year—six columns all told, in both the profit and loss account, and balance sheet. Different coloured backgrounds help to prevent confusion, but one wonders whether the effect is not a little overwhelming. For those not familiar with accounts, there is nothing really distinguishing the most important set of figures. One welcomes the additional information, but it might be better shown in the notes section. An addition this year is an appended schedule giving salient trading figures over the past ten years: it sets the seal on a very informative set of accounts, for which Stewarts and Lloyds deserves every credit.

Net Dividends instead of Gross

It used to be fairly common practice to show dividends in published accounts at their gross amount, but with the sharp increase in taxation and the requirements of the Companies Act, it is now a comparative rarity to see accounts still adhering to the form. *Gabriel Wade and English* has followed the practice in the past, but the latest accounts have fallen in with present fashion and show the dividends deducted net. The difference between the two methods is largely technical, but to show a dividend gross effectively inflates, by the amount of tax payable on the dividend, the net profit shown, though leaving the profit before tax, and the profit finally retained in the business, unaffected. In these days, showing dividends gross seems to rank with the showing of distributed profits tax as part of the cost of the dividend. The following figures extracted from the accounts of Gabriel Wade and English indicate the mechanics involved in changing from a gross dividend presentation to a net presentation.

	£	£
Accounts for year ended May 31, 1956:		
To Balance, net profit carried down		215,126
To Taxation (including future income tax on profits for which credit has been taken to date)—		
Income tax	47,501	
Profits tax	25,750	
		73,251
To Proportion of subsidiary company's profits attributable to minority shareholdings therein	15,464	
To Balance, profit attributable to parent company's shareholders, after providing for taxation	126,411	
		141,875
		£215,126

Comparative figures in accounts for year ended May 31, 1957:

£	£	
	215,126	To Balance, net profit carried down
		To Taxation (including future income tax on profits for which credit has been taken to date)—
82,542		Income tax
25,750		Profits tax
	108,292	
		To Proportion of subsidiary company's profits attributable to minority shareholdings therein
15,464		
		To Balance available to parent company's shareholders, after providing for taxation
91,370		
	106,834	
	£215,126	

Cost of dividends shown in 1955/56 accounts: £82,450. Cost of dividends shown for the year ended May 31, 1956, in the 1956/57 accounts: £47,409.

Readers' Points and Queries

Valuation of Chief Rents

Reader's Query.—I have a client, a builder, who has recently built some houses on ground subject to a chief rent.

He has created a second chief rent to cover himself, and the Inspector wishes to value these second chiefs at fifteen years' purchase. We have suggested eight years' purchase as sufficient for second chiefs. The solicitor who deals regularly with the purchase and sale of chiefs gives his opinion that eight years is ample, but the Inspector does not appear interested in the solicitor's opinion.

Is there any case law or other yardstick which would help us in our argument?

Reply.—The valuation of chief rents is a question of fact. They must be brought in at their realisable value, which will vary according to the situation and type of property. There is no case law which gives any basis of valuation, although Beattie v. Broadbridge *(1944) 26 T.C. 63 lays down the realisable value rule. Since there is such a wide divergence, the matter should be taken to appeal and be supported by evidence from a person or persons, such as the solicitor, who deals regularly with such events.*

Compensation for Loss of Office—Director

Reader's Query.—One of the directors of a company with which I am associated has been in office for many years. Despite the fact that the company has made fairly considerable profits, the Board has decided that he should be removed and his place taken by a younger and more energetic person. The director has been receiving remuneration in the neighbourhood of £3,000 per annum and has no shareholding in the company apart from the necessary director's qualification shares. There is no service contract but the Board feels that he should be awarded the sum of £10,000 as compensation for loss of office.

I think I am right in assuming that such a payment will be allowed as a charge in the company accounts, but in view of the decisions in the case of *Beach* v. *Reed Corrugated Cases Ltd.* (1956) and *Gourley* v. *British Transport Commission* (1956), do you think there is any danger of the director being taxed upon this lump-sum compensation?

It does seem to me that he should receive this sum as a tax-free payment because there is, as stated, no service agreement, and also because this is a payment for genuine compensation for loss of office.

Reply.—What the two cases decided was that, in the calculation of compensation, the fact that the recipient would have had to pay tax on his remuneration must be taken into account—that is, the lump sum is diminished accordingly. But the character of the compensation is not affected, and there is ample authority for saying that compensation for loss of office cannot be assessed on the recipient. There is, however, the possibility that the Inland Revenue could attack the payment as being not laid out wholly and exclusively for the purposes of the trade to the extent that it exceeded a reasonable payment for compensation. Having regard to the Gourley *case, it would seem that £10,000 in the circumstances is a rather high amount.*

Tax on Royalties from Works of Deceased Author

Reader's Query.—Does the decision in *Carson* v. *Cheyney's Executors* mean that a person entitled to royalties from the books of a deceased author receive them tax free or does the freedom from taxation apply to the executors only while they are administering the estate?

If contracts made by the deceased have expired and the person benefiting from the copyrights under the deceased's will enters into new contracts, do the royalties then become taxable, notwithstanding that they represent income earned by the deceased during his lifetime?

Reply.—In the Cheyney case the deceased was assessed under Schedule D, Case II, and the General Commissioners, the High Court and the Court of Appeal held that receipts which were regarded as professional remuneration were not taxable when receivable after death. Tax under Case II ceases when death causes the end of the professional activity. Payments which would have been taxable under Case II had the author lived cannot change their nature and become taxable under Case III or Case IV because he is dead. It would not matter whether the estate was still in course of administration or not. Harman, J., quoted with approval the dictum of Asquith, L.J., in Stainer's *case, 1952, A.C. 280: "The contracts were mere incidental machinery regulating the measure of the services to be rendered by him on the one hand and, on the other, that of the payments to be made by his employers; they were not the source, but the instruments of payment, and his death, in my view, did nothing to divest them of that character."*

If a beneficiary were to enter into new contracts to exploit the copyrights for royalties, that would appear to be outside the decision. He would be receiving income under a contract made by himself.

Life Assurance Relief—Husband and Wife

Reader's Query.—If the husband's earned income is insufficient to permit the full life assurance relief due, is it the Inland Revenue practice to allow the relief against the combined earned income up to the maximum of one-sixth of the composite net earned income? Is it necessary to prove whether any of the life assurance premiums may actually have been paid by the wife? What would be the procedure in the coding of the two spouses as regards a provisional life assurance allowance?

Reply.—Life assurance premiums paid are not annual charges which would reduce the taxpayer's total income. Earned income relief is granted on the aggregate earned incomes of husband and wife before deducting allowable premiums. It is not clear from the letter whether the husband or wife has any unearned income. Life assurance relief can be given against unearned as well as earned income.

Section 210 (4), Income Tax Act, 1952, provides that premiums paid by the wife shall be deemed to be paid by the husband: it is irrelevant, therefore, which spouse pays the premiums. If the husband's earned income is insufficient to permit full life assurance relief and there is no unearned income, the excess relief must be set off against the wife's earned income in calculating the additional reduced rate relief on her income. This adjustment is, however, for the purposes of calculating the additional reduced rate relief. The allowable premiums are calculated by reference to the aggregate incomes of husband and wife.

In the husband's coding notice life assurance relief will be given on an amount equal to one-sixth of the husband's estimated earned income. The excess relief will be given in the wife's coding notice.

Discount on Capital Items

Reader's Query.—I have seen it stated for students that cash discount obtained on capital purchases should normally be credited to profit and loss account and the invoice price capitalised.

In practice I find that almost always discount on capital items is deducted from cost and the *net* price capitalised—a method which appears from the audit instructions in my firm as being correct.

It has been argued that discount received may be regarded as being an interest charge for early payment—for the loss of interest on the money paid or for the cost of an advance from the bank. It seems to me though, that cost can be only the factual amount paid for an asset, not something that might have been paid if the discount had not been received.

What do you consider to be the correct "cost" of an item shown in the accounts "at cost"—the gross or the net amount?

Reply.—One finds in practice that capital items, especially if of any material cost, are supplied either on quoted terms which are net, or under a specific contract, so that no question of pure cash discount would normally arise.

It does often happen that concerns have running accounts with, say, tool merchants and ironmongers, for the supply of loose tools, etc., subject to 2½ per cent. cash discount on monthly account. Frequently, comparatively small items of plant are bought from those merchants, and come in for the cash discount. The discounts are treated as suggested in the first paragraph of our reader's query, and there is no objection to that treatment.

Again, a business may (and often does) carry out by its own workmen capital works, drawing on the stores for materials, which would be charged out from stores to the job according to the basis adopted by that business—standard cost, actual cost, average cost, and so on. Any cash discount received on the purchase of the stores materials would go to the discount account and thence to profit and loss account. It would be unusual, often impracticable, to attempt any apportionment.

The "One-Twentysixth Deduction"

Reader's Query.—In a recent case in which one property consisting of three floors was let for varying periods of the tax year as either furnished or unfurnished (one floor, for instance, being let for a period unfurnished, then the same floor being let furnished during the year, and the reverse applying to another floor) one-twentysixth was deducted from the gross rents (unfurnished and furnished) less rates, since a full year's rents were being brought in. The Inspector of Taxes contends that the deduction is allowed from unfurnished lettings only when rent for a full year is included in the computation.

In the particular circumstances, as it is not practicable to segregate the unfurnished rents from the furnished rents but the whole total is brought into charge to tax, is the Inspector's contention correct?

Reply.—The deduction of one-twenty-sixth has no statutory basis and is a matter for the General Commissioners in fixing the assessment. In our view, the Inspector of Taxes is correct.

Work-in-Progress

Reader's Point.—I was rather disturbed to read two passages in the note on work-in-progress on page 89 of your February issue. These passages read as follows:—

> In most circumstances, overheads can also properly be added to arrive at true cost. However, the total cost can be reduced only if it can be shown that it is likely to be in excess of realisable value.
>
> In a professional account, that of an accountant, solicitor, etc., work-in-progress ought to be costed by reference to the usual rates of charge, but having regard to any special arrangement such as an agreement upon a fixed fee for the job.

Particularly in view of the inclusion of the words "true" and "only," the first passage appears to mean—or at least to imply—that total cost (which would include a due proportion of all overheads) is the accepted basis and can be reduced only if it is likely to exceed the realisable value.

As regards the second passage, I cannot think of any meaning for the expression "usual rates of charge" other than the rates at which the work will be billed to the client—that is, "selling price."

Although these paragraphs start by acknowledging that the subject is one which gives rise to many arguments, I believe that the vast majority of qualified accountants would disagree with the suggestion that industrial work-in-progress ought to be valued at total cost, except, perhaps, in very unusual circumstances; and such a proposition is hardly in line with paragraph (2) of the Recommendation X (Valuation of Stock-in-Trade) of the Institute of Chartered Accountants in England and Wales. Equally, I would think that most accountants would disagree with the suggestion that professional work-in-progress ought to be valued at "selling price."

Reply.—We take this opportunity to confirm that there was no intention to express in the note on the subject of the valuation of work-in-progress anything different from the view put forward by our reader. We were affirming in the note that what had to be arrived at was the cost. In the phrase "costed by reference to the usual rates of charge" the operative word was "costed" and, again, no profit should be included. In general, the lower cost or market value applies to work-in-progress equally with stock-in-trade.

Revocable Settlements—Director-Controlled Companies

Reader's Query.—I have referred to the passage on page 20 of ACCOUNTANCY for January, in the course of the article "Revocable Settlements—A Loophole." It is my understanding that if the shares in an investment company are held by a discretionary trust, there cannot be a surtax direction.

Reply.—Section 260, Income Tax Act, 1952, can ignore the terms of the settlement where the settlor can be deemed to control the company. For the purpose of this Section ability to secure the application of income or assets includes the ability to do so by resort to unlawful means, such as a breach of trust, provided that the person in question could reasonably rely upon the beneficiaries not compelling him to account. (C.I.R. *v.* L.B. Holdings Ltd., *28 T.C. 1.*).

The fact that other persons may have a legal right to restrain the person in question is immaterial if the Special Commissioners or the Board of Referees consider that those persons will not exercise their right. (Hulme Estate Co. Ltd. *v.* C.I.R., *28 T.C. 107*).

Where the settlor could not control, then we should agree with the reader that no surtax would be payable upon any profit apportioned to a discretionary trust.

Reader's Query.—I read with interest the article on "Revocable Settlements" in the January issue of ACCOUNTANCY.

If a controlling director forms a discretionary trust of only a comparatively small part of his holding, does this prevent the Inland Revenue from making any surtax direction on the company, or is the result only to prevent a surtax direction in respect of the proportion of

the income of the company attributable to the shares held by the trust?

Reply.—It is only the estate or trading income appropriate to the trust that will not be liable to surtax. If the company is an investment company, however, then, as stated in the article, the whole of the income will be apportioned to the controlling director.

Revocable Settlements — Discretionary Trusts

Reader's Query.—In the January issue of ACCOUNTANCY (pages 19–21) *Revocable Settlements*, under the heading "Discretionary Trusts" it is stated that "for the settlor or his wife to be a trustee is dangerous from the taxation point."

I am one of three trustees to a trust created by my wife in which funds are held in trust for our children, the income being accumulated until the children reach the age of twenty-one. There is no possibility that my wife or I could be entitled to any of the income or capital.

Is it still dangerous in this case? Should I resign as a trustee?

Reply.—There are, of course, several reasons why it is inadvisable for the settlor to be a trustee, but, presumably, this situation does not arise.

The reason for excluding the settlor's spouse from the trusteeship is, as our reader implies, to ensure that no benefit shall accrue, or be capable of accruing, to him or to her as income is being accumulated. In this instance it is stated that there is no possibility of this happening. Provided the reader is not capable of benefiting under the professional trustees' charging clause or from any loans, there is probably no reason to be worried. In giving this opinion, however, we assume that he is not a director of a company whose shares are held by the trust, because, if so, there may be a possibility of the additional holding making the company "director-controlled" for profits tax purposes. In that event, however, the order in which the trustees appear on the register of the company would be relevant.

Letters to the Editor

Points from Published Accounts

Sir,—I cannot allow to pass unquestioned certain views of your contributor expressed in his "Points from Published Accounts" in your issue of January, 1958, for he seems to me to be misguided on three quite separate points.

1. In commenting on the consolidated balance sheet of *British Chrome & Chemicals (Holdings) Ltd.*, he describes the caption "excess of consideration over book values of net assets of subsidiary companies at dates of acquisition" as "jargon and circumlocution" and he asks: "Why not describe the item for what it is—goodwill?" Surely the answer is that the item may not have anything to do with goodwill. It may simply arise out of differences between the book value of the subsidiaries' tangible assets and the price paid for them on acquisition. The caption on the balance sheet is a precisely accurate description of what the item is, even if the wording is somewhat lengthy. To call the item goodwill is shorter, but probably inaccurate. Directors ought not to be attacked for preferring accuracy to brevity.

I say nothing about your correspondent's further question: "Why, one also wonders, does this item not figure in the parent balance sheet?", for the question cannot have been prompted by ignorance of the technique of consolidation, yet on no other supposition can I make any sense of it.

2. Your correspondent comments adversely on the treatment of taxation in the *Charles Winn* accounts as a use of net profits instead of as a deduction in arriving at "net earnings after tax." Indeed he describes this treatment as an error of principle, because, he says :"What is left of the profits after they are taxed is what counts." Counts for what? Certainly it is *not* the figure that counts if you are looking for an index of the company's earning power. For that purpose, it is profits before tax which are significant. Tax charges may bear no close relationship to the profits on which they are based, either because of the incidence of loss claims, disallowable expenditure, or for other reasons. Moreover, there is good legal authority for treating taxation as an appropriation of profits. The *Charles Winn* treatment of tax is perfectly logical. At the worst, it places the emphasis on one figure, while your correspondent thinks it should be placed on another. This merely illustrates what by now we should all recognise, that no one set of accounts can be ideally suited for all purposes. It is absurd to talk about errors of principle in this context.

3. The second error of principle in the *Charles Winn* accounts, according to your correspondent, is that equity capital and preference capital are lumped together in one figure in the balance sheet, because this implies, he says, a right on the part of the preference shareholders to share in surplus assets. I see no reason to read any such implication into the balance sheet as it has been presented. It is obvious that the directors have sought to keep the balance sheet as free from details as possible, leaving these to be dealt with in the notes, and there is, of course, a note clearly showing the division of the capital into classes. Precisely the same treatment was adopted in the prize-winning 1955/6 accounts of the *United Steel Companies*, so that if the Charles Winn directors have sinned, they have at least sinned in good company.

All this merely serves to show how circumspect we ought to be before crying "error of principle." Accounting has, alas, so few principles that it is not as easy to contravene them as your correspondent seems to think.

Yours faithfully,

DAVID SOLOMONS, B.COM, A.C.A.,
Professor of Accounting
Department of Economics,
University of Bristol.

Sir,—I cannot help but take issue with the over-simplification on page 31 of the January issue under the caption "Sixteen Words for One."

The commentator deplores the term "Excess of consideration over book value of net assets of subsidiary companies at dates of acquisition" and asks "Why not describe the item for what it is—goodwill?"

Why should the commentator be so positive that it is goodwill when the directors feel that such a simple explanation is incorrect? Is it not possible that the excess may be composed of a variety of things? Possibly, based on appraisal at the time the subsidiary was acquired, the land, buildings, and machinery (because of rising prices or excessive depreciation or a combination of both) are worth much more than the book values. Possibly a very valuable patent with a limited life is owned by the subsidiary and carried at a relatively low cost. In the United States the inventory could be on the L.I.F.O. basis and substantially undervalued on the books of the subsidiary in terms of replacement cost. While I understand that L.I.F.O. is not an acceptable basis for inventory valuation in Britain, surely at times conservative methods will result in a valuation which is well below replacement cost and which would be recognised by the purchaser in acquiring a subsidiary.

Good practice would require that as a first step in consolidation an effort should be made to ascertain just what was acquired. If it were fixed assets the excess should be allocated to that caption (and depreciated) and so on. It may not be possible to make such an allocation, and in that case it is preferable to describe the excess by the lengthy though exact description "Excess of consideration over book value of net assets of subsidiary companies at dates of acquisition" rather than the shorter, but almost certainly incorrect, caption "goodwill."

Again, under goodwill I wonder if the criticism of *Hazel Sun* on the same page is merited. If unusual and possibly short-lived earnings are acquired through paying more for a business than the book value of tangible net assets, I agree with the commentator that it is "prudent financial practice to eliminate goodwill from the balance sheet" but not in one bite unless the goodwill disappeared overnight and not as an appropriation. It is far from conservative accounting to include these unusual earnings in profits and the related write-down of goodwill as an appropriation of profits. If there is every prospect that the earnings will continue indefinitely, there would not seem to be much justification for a write-down at all. However, if it is made because some day there might not be justification for carrying goodwill at its present value, is it conservative (from the point of view of determining net income) to consider the write-down as an appropriation? Would it be good accounting to by-pass the income account if the directors " in their discretion" decided that £100,000 should be written off a depreciable asset? Why is the treatment different in the case of goodwill?

Finally, and still referring to page 31, while an Act of Parliament must be helpful in keeping difficult clients in line, surely, in those rare cases in Britain where the accountant reports on "accounts prepared outside the aegis of the Companies Act, 1948," he must still satisfy his conscience as to whether or not the balance sheet and profit and loss account give respectively a true and fair view of the state of the company's affairs and of the profit for the year.

The opinions expressed are my own. My partners would not necessarily agree.

Yours faithfully,

JOHN PEOPLES, A.C.A.

Peat, Marwick, Mitchell & Co.
New York, 5, N.Y.

Sir,—I was pleased to read your comments (in ACCOUNTANCY for January, 1958, page 32) on our second effort to "show the world," but sorry to see that you, too, are a "profit after taxation" supporter.

The more I go into these matters, the more surprised I am that anyone wants to keep that basis. (I am converting accountants rapidly, I am pleased to say.) Most of the so-called "taxation on the profits of the year" isn't! Most of it is the income tax that will be paid out of next year's profits (*vide* the balance sheet). It would be much simpler, of course, if (as I understand has been proposed by at least two Taxation Commissions) income tax—like profits tax—were based on the current year's profits. I gather that accountants agree with the recommendations of the Commissions on this point. The difficulty, I understand, is administrative.

Also, frequently (it is so in our case) "taxation" in the profit and loss account includes tax deducted (at source) from payments received or made; and it may include Schedule A income tax, too.

However, whatever the figure includes makes no difference to my argument. Whatever taxation is paid by a company that is not handing over the tax deducted at source from payments (other than payments of dividends, of course) is in effect taxation of the shareholders (the owners of the company), exactly as any other taxation of this nature is taxation of the individual.

In any case, the company recovers from the shareholders the income tax it pays in respect of profits distributed; and, if the shareholder is not liable to pay income tax, or at any rate not at the full rate, he can recover from the nation all or part of what has been deducted from his part of the distribution. So, in some cases, even the shareholder doesn't pay the tax, let alone the company.

Another point. In these days of differential (or two-tier) profits tax, the taxation cannot even be calculated until the dividend declaration—which is of the gross figure in effect, however it is described—has been decided upon. The directors have to settle this (for recommendation to the shareholders) first.

No. Not only is it a complete fallacy to deduct taxation—worse still to deduct taxation that doesn't apply to the year under review and may not even apply to the following year (see the notes sent out with the income tax return forms); it is, I maintain, wrong—absolutely wrong—with not even any room for argument! It is certainly wrong for the shareholder. It is already confusing enough for him that the profit distributed is normally shown only as the amount remaining after the deductible income tax has been deducted. It is obviously clearer if the gross amount of each dividend (that is, the amount prior to deduction of income tax) is also shown in the accounts. This is how we—and a few, a very few, other companies—show it.

After all, the accounts are for the shareholders—not for anyone else—according to the law. Why not see that they properly inform the shareholders?

Your point about Preference capital is a good one. I have already come round to this point of view and am allowing for it in the further proposals I am now in process of formulating. As it happens, it is essential to those proposals.

Based on comments of teachers of accountancy and allied subjects and on the fact that our accounts are already being used for tuition at universities, technical colleges and colleges for further education, I do not think we were wrong in making such drastic alterations at one fell swoop. It has shown just how far it is possible to go in simplification and, now, it is a matter of trying to strike "the happy mean."

I am glad you have come out so strongly in favour of the elimination of "reserves." That is definitely the most urgently needed of all modifications to accounts. It was the urge to achieve just that, if nothing else, that started me on the road to accounts reform. Then, after I had succeeded in eliminating "reserves" myself, I found the Americans, for the most part, had done so long ago! If the Americans, why not the British? And, as has been shown, the word is so completely unnecessary in any case.

Yours faithfully,

N. K. MOUSLEY

Charles Winn & Co. Ltd.,
Birmingham, 1.

[We take the first point made by Professor Solomons and Mr. Peoples, but still think the expression was a long-winded one. Agreed, we ought not to have taken it that the goodwill element must have been the whole of the amount in question—but what it was might with advantage have been quantified. On Professor Solomons's second point—*touché*! The other points in the letters show that these issues are controversial, more than one view being tenable. Professor Solomons rebukes us for criticising Mr. Mousley on lumping together equity and Preference capital, while Mr. Mousley thanks us for the criticism and accepts it!—Editor, ACCOUNTANCY.]

Publications

Taxation in the United Kingdom. By Walter W. Brudno, assisted by Frank Bower. Pp. xxxiii+534. (*Little, Brown and Co., 34 Beacon Street, Boston, 6, Mass., U.S.A.:* $15 net.)

IN RESPONSE TO an invitation by the United Nations the Harvard Law School undertook *The World Tax Series*, an encyclopaedic survey of the tax systems of about thirty countries. The volume on the United Kingdom, one of the first two to appear, was primarily the work of Mr. W. W. Brudno, but Mr. F. Bower collaborated with him as correspondent. In addition, contributions were made by a number of other experts and by institutions.

The result is a comprehensive report in three parts. The first part gives the background of the economy and the taxation system, with an introductory outline on the individual taxes. The second analyses income tax quite minutely. The third is a shorter part, covering in detail profits tax and purchase tax. The three parts follow the pattern laid down for all the volumes in the series—a general introduction, followed by a dissection and analysis of income taxation and concluded by the elaboration of other taxes "deserving more detailed treatment." That the estate duty was not added to the profits tax and the purchase tax in the third part of the volume on the United Kingdom seems to make the book slightly lacking in balance.

The aim is, essentially, to provide collated and systematised information for the non-national, and that aim is abundantly achieved. Accountants in this country will not find the book of any great assistance to them in a technical sense, but it invites brousing; others here who are nearer the periphery in tax matters—accountancy students, business men, lawyers—could from closer study "learn something to their advantage." L.T.L.

The Principles of Auditing. By F. R. M. de Paula, C.B.E., F.C.A. Twelfth edition by F. Clive de Paula, T.D., F.C.A., F.C.W.A. Pp. xvii+371+Index II. (*Sir Isaac Pitman & Sons Ltd.:* 30s. net.)

THIS BOOK WAS first published in 1914 and the eleventh edition published in 1951 was still the work of the late Mr. F. R. M. de Paula. The book has been recognised for many years as one of the standard works on auditing and this twelfth edition, which has been fully revised by Mr. F. Clive de Paula, the original author's son, will ensure that the book retains its place.

The book was originally and still is designed primarily to provide "middle-stage" students with a textbook dealing with the general principles upon which all audit procedures should be based. The fundamental distinction between accountancy and auditing is dealt with in the opening pages and from that starting point the first sections of the book deal with the routines of checking and vouching, and the valuation and verification of assets. There is a detailed examination of the requirements of the Companies Act, 1948, in so far as it relates to auditors, and a critical analysis of the contents and presentation of the profit and loss account and balance sheet. The Eighth and Ninth Schedules to the Act are usefully set out in full as an appendix.

Two important chapters deal with the legal position of auditors especially regarding their liability for negligence both to their clients and to third parties. Particular attention is paid to the Royal Mail Steam Packet Company case (*Rex* v. *Kylsant*) (1932) 1 K.B. 442 which, in the words of the author, had a most profound effect upon the accountancy profession, the lessons of which clearly shaped the new legislation instituted by the Companies Act, 1948. (The reference should be to the 1947 Act.) The author discusses the case of *Le Lievre & Dennes* v. *Gould* (1893) 1 Q.B. 491, as indicating that, in the absence of fraud, an auditor is not liable to third parties who suffer damage, but unfortunately does not refer to the more modern and similar case of *Candler* v. *Crane, Christmas & Co.* (1951) 2 K.B. 164; (1951) 1 All E.R. 426 (Court of Appeal) which, although decided similarly, is noteworthy for a dissenting judgment of Denning, L.J. This section of the book would perhaps have been improved by a more drastic revision and abridgement, as certain of the cases are now of predominantly academic interest only and are not of great current value to the general student. The table of cases, incidentally, does not always provide a reference to the law reports or even note the date of the cases.

There is a short review of the principles of auditing group accounts and, by way of illustration, the annual accounts for 1955 of the *Dunlop Rubber Co. Ltd.* are most usefully set out in full, although it is doubtful whether the chairman's speech (amounting to eleven pages of very small print) is of any lasting value in a text book of this nature.

Among the most important attributes of the book are its comprehensiveness and the original and personal thought of its author. The de Paulas are never afraid to draw conclusions or to point morals and the reader is conscious the whole time of the desire to emphasise the responsibilities of an auditor and to point out what is best in current professional practice. The book is thus not only of value to the professional student, but should also be read with care by the economist, the company secretary and all who are concerned with preparation and interpretation of accounts. H.J.L.

Buckley on the Companies Acts. By the late The Honourable Lord Wrenbury, P.C., M.A. Thirteenth edition by J. B. Lindon, O.B.E., M.A., LL.M., Q.C., assisted by G. Brian Parker, M.A., LL.B., Barrister-at-Law and Hugh R. Williams, B.A., Barrister-at-Law. Pp. ccxxxii+1,230 and index 165. (*Butterworth & Co. (Publishers) Ltd.:* £6 17s. 6d. net.)

Buckley, as indispensable a part of the company lawyer's equipment as his desk, is something of a luxury to the average accountant—ranking perhaps with his office armchair. But if for the sake of the personal or partnership accounts semi-luxuries are foregone, then they must be available at very short notice—the book like *Buckley* from a library (as the post-prandial armchair can be had at club or hotel lounge). For this weighty tome, now eighty-five years old, is still the prime source and reference book for all who seek the Authoritative Word on the law of companies.

The thirteenth edition is edited by Mr. J. B. Lindon, Q.C., well known as a company lawyer and Inspector appointed by the Board of Trade. The Buckley family element is preserved, for one of the assistant editors, Mr. H. R. Williams, is a grandson of the original author, Lord Justice Buckley, later Lord Wrenbury. The other assistant editor is Mr. G. B. Parker.

The twelfth edition appeared in 1949, just long enough after the passage of the Companies Act of 1948 to take notice of the legislation but too soon to weigh it with sustained deliberation or with the advantage of case law. The unavoidable shortcoming of that edition has now been made good—and amply made good, though the perusal of the new edition shows how little, relatively speaking, the law of companies has depended in the last decade upon

judicial decision—a testament to the good work of the Acts of 1947 and 1948. Yet over all the years there are more than six thousand cases quoted here.

The tradition is preserved of giving the complete Act, Section by Section, each followed by commentary and explanation. The text, which is of commendable lucidity, is constructed step by step on the decided cases and replete with cross-references and footnote references to cases. The indices, properly, are copious. L.H.

Sixty Years of the Chartered Insurance Institute, 1897–1957. By H. A. L. Cockerell, B.A., F.C.I.I. Pp. 92. (*The Chartered Insurance Institute, London:* 5s. 6d. post free.)

Insurance. By H. A. L. Cockerell, B.A., F.C.I.I. Pp. x+210. (*The English Universities Press, Ltd.:* 6s. net.)

MR. COCKERELL'S PEN has been fluent indeed this last year or so. In the first of these books, written to commemorate the golden jubilee of the Chartered Insurance Institute, its present secretary traces the history of the Institute from the earliest plans of its pre-founders to its attainment of 38,000 members. He gives all the important dates, records all the important names, marks all the important stages of growth; but dates, names and historical recital have not prevented him from putting together, in flowing style, a tale that insurance men will find quite absorbing and many others will enjoy.

Nothing adulatory finds a place in this book. Pride in achievement is there—but also criticism of shortcomings and consciousness of what remains to be done. Mr. Cockerell recognises that, though the newly-elected "A.C.I.I." who finds himself, to his mortification, described by non-insurance men as "A.C.2," may be apocryphal, the apocryphy is current, not of the past. He is tart about the lack of any interest in insurance in the universities, and biting about the apathy of the Ministry of Pensions and National Insurance for the work of the Institute in social insurance.

The Chartered Insurance Institute runs a businesslike tuition course for its examinations by correspondence and very recently it has started a College of Insurance for full-time studies. Many who are inside insurance rank this educational activity as the most successful part of the work—and its story may cause some who are outside to ponder.

In his second book, one of the "Teach Yourself" series, by a feat of compression Mr. Cockerell provides almost everything that the non-expert need know about insurance, set down in straight brisk English—law, principles, history, financial mechanism, the various branches of insurance, reinsurance, National Insurance, the market and the insurers, the place of the State, the future. Remarkable value, this, for 6s. L.T.L.

The Chambers of Commerce Manual, 1958. (The Business Man's Reference Book.) Edited by Andrew Shonfield. Pp. 260. (*Published on behalf of the Association of British Chambers of Commerce by Newman Neame, Ltd.:* 50s. net.)

Pitman's Business Man's Guide. (A Comprehensive Dictionary of Commercial Information.) Thirteenth edition. Pp. iii+483. (*Sir Isaac Pitman and Sons:* 20s. net.)

THE BULK OF the *Manual* is a factual collection—on statistics coming within the general description of "economic trends" and on information customarily to be found only in a selection of directories. The statistics are on the home market, external trade, output, labour, finance, and economics abroad, with full indications of sources for consultation. The directory and reference section gives a great deal of the material likely to be needed by the businessman, especially if he is concerned with foreign trade—information on government departments; industrial, trade and professional bodies; banking and finance; publications; international institutions; taxation; trade regulations in other countries; and so on.

As a reference book and directory the *Manual* is first-rate. It is about the rest of the volume that one may have some doubts. The first section is given up to what are essentially essays on themes of applied economics. As assessments of the situation and outlook on such subjects as transport, power, the European free trade area, Commonwealth trade, these pieces carry the unimpeachable authority of the half-dozen experts who contributed them, but inevitably they are already somewhat dated and as the year 1958 wears on, the divorce between them, as reasoned and analytical vignettes, and the tables and columns of facts and figures in the directory itself, must certainly become more marked. In short, is a reference book of this kind, which people will consult rather than read, really the place in which economists should dilate? Is it not enough for the applied statistician to set out his figures with a minimum of text and for the assiduous compiler of factual information to compile?

The *Business Man's Guide* does not purport to give the last word after its numerous entries—an impossible aim. It is a dictionary to which the businessman—and others in like situation—can readily turn for information in condensed form on commercial, industrial, financial and legal topics, as a reminder or to give the outline that very often serves the immediate purpose. Gaps in the entries can be easily found—as examples, there is none under restrictive practices, under cycle billing, under wayleave, but the book could not be much more comprehensive without losing its handy form and low price. Occasional mistakes are present—as that the banks tender for Treasury bills. A useful feature is that for many commercial terms and phrases the equivalents are given in French, German, Spanish and Italian. L.F.

The Planning and Measurement of Profit. A Technique of Management Accounting. By the Association of Certified and Corporate Accountants. Pp. 32. (*From the Association,* 2s. 6d. net.)

DECISIONS CONCERNING THE expenditure of capital on new projects are usually taken in the light of the adequacy of the profit likely to accrue from the expenditure. The authors of this booklet recommend the extension of the use of the profit/capital employed relationship to form the basis for the forward planning of established businesses, on the premise that "the owner of capital invested in an enterprise should be continuously examining the prospects of obtaining more profit, without a comparably greater risk, by employing his capital in a more remunerative manner." Profit targets would be set up as an incentive and standard of efficiency for each division or branch of the business, having regard to the amounts of capital employed and the degree of risk.

The argument is presented attractively but the practical implementation is not without difficulty, particularly the assessment of the amount of the capital employed, that is, the value of the assets employed. Revaluation on the basis of "current monetary values" is suggested. It is doubtful whether this desire to relate profits to assets at current values justifies the suggestion that finished stocks should be written up to realisable values. Some readers will also hold different views about the exclusion of purchased goodwill from the total of capital employed, and the inclusion of investments, which often represent funds not employed in the business.

No attempt is made to consider the

question in relation to a business whose assets have current values lower than the book values. It may be argued that the amount at risk can never be less than the cash capital introduced and that it would be unrealistic to set profit standards by reference to any smaller amount.

Some adjustment of the amount of profits disclosed by conventional accounting is proposed in order to arrive at the proper amount of current earnings to be related to the established capital values. These adjustments, and the adjustment of asset values, are well illustrated in a worked example.

This interesting and easily read booklet should achieve its purpose in stimulating thought and discussion on the use of capital employed as a basis of profit measurement for management purposes.

H.T.S.

An Introduction to Company Law. By J. A. Hornby, M.A., LL.B., Barrister-at-Law. Pp. 188. (*Hutchinson & Co. (Publishers) Ltd.:* Price 18s. net.)

FROM TIME TO time a book appears on the market and stands out from those surrounding it. Such a book is *An Introduction to Company Law* by J. A. Hornby.

The distinctive feature of an outstanding book is often simply its presentation, though sometimes also its subject matter. For want of a deeper analysis the writer is often credited with originality, a much debased term, but there can be no doubt that whether the originality springs from genuine inspiration or simply from good showmanship its effect, when it is present, is most invigorating. So many books on company law go over the same old ground in the same old way without in any manner disguising from the reader and student the hard fact that it is as dry as dust. Mr. Hornby evokes a very different sentiment.

As far as I am aware no one has hitherto tried to explain to the layman, accurately and in language that he can understand, what a company is, how it is formed and why the laws governing its affairs have their present characteristics. That deficiency is now admirably remedied by Mr. Hornby. But I do not wish to be misunderstood. Certainly he still goes over the same old ground—*Salomon* v. *Salomon & Co. Ltd.*, *Ashbury Railway Carriage Co. Ltd.* v. *Riche*, *Royal British Bank* v. *Turquand* and so on—but I suppose it is well nigh impossible to avoid doing so. Nevertheless, Mr. Hornby manages to make his book highly readable as well as interesting.

Mr. Hornby calls his book an introduction. Like a good overture, it must whet the appetite for the major work. In this Mr. Hornby abundantly succeeds and any serious law student or anyone whose ambition one day is to be a company secretary must begin his studies with this book. Interest is stimulated and the student will eagerly tackle the intricacies which exist in the subject and are housed in more formidable looking volumes. Indeed, a foundation is here laid for a full understanding of the subject.

J.S.O.

Books Received

Some British Industries, 1936–1956. Their Expansion and Achievements. By Alan Hess, F.I.P.R. Pp. 329. (*Information in Industry Ltd., 17 Clifford Street, London, W.1:* £2 2s. net.)

The Life and Work of Frederick Winslow Taylor. By Lyndall F. Urwick. Pp. 18. (*Urwick, Orr & Partners Ltd., 29 Hertford Street, London, W.1:* 2s. 6d. net.)

Buckinghamshire County Council. Accounts for the year ended March 31, 1957. Pp. 183. (*County Treasurer, County Offices, Aylesbury.*)

Housing Statistics, 1956/57. Pp. 81: 7s. 6d. post free. **Return of Police Force Statistics, 1956/57:** 3s. post free. (*Institute of Municipal Treasurers and Accountants, London, S.W.1.*)

The Certified and Corporate Accountants' Year Book, 1957–58. Pp. 576. (*Association of Certified and Corporate Accountants, 22 Bedford Square, London, W.C.1.*)

1957 Supplement to Index and Digest of Tax Cases, summaries of which have appeared in *The Income Tax Payer* during 2 years ending July 31, 1957. Pp. 50. (*Income Tax Payers' Society, Abbey House, 2 Victoria Street, London, S.W.1:* for circulation to members only.)

The Index of Technical Articles. No. 11, December, 1957. (*Iota Services Ltd., 38 Farringdon Street, London, E.C.4:* £6 6s. per annum.)

Key to Business Book-keeping. By R. A. Goodman. Third edition. Pp. iv+347. (*Sir Isaac Pitman & Sons, Ltd.:* 20s. net.)

The Electronic Office. By R. H. Williams, A.I.B. Second edition. Pp. 80. (*Gee & Co. (Publishers) Ltd.:* 17s. 6d. net.) First edition reviewed in ACCOUNTANCY, April, 1956, page 146.

The National Income of Tanganyika, 1952–54. By Alan T. Peacock and Douglas G. M. Dosser. Pp. 78. (*Her Majesty's Stationery Office:* 7s. 6d. net.)

The Principles of Executorship Accounts. By H. A. R. J. Wilson, F.C.A., and K. S. Carmichael, A.C.A. Third edition. Pp. xii+162. (*H.F.L. (Publishers) Ltd.:* 15s. net.) Second edition reviewed in ACCOUNTANCY, April, 1957, page 146.

Prosperity through Competition. The Economics of the German Miracle. By Ludwig Erhard, Vice-Chancellor and Minister for Economic Affairs of the German Federal Republic. Pp. xii+260 and 3 tables. (*Thames & Hudson, Ltd.:* 25s. net.)

Practical Financial Statement Analysis. By Roy A. Foulke. Fourth edition. Pp. xx+712. (*McGraw-Hill Publishing Co. Ltd.:* 58s. net.) Third edition reviewed in ACCOUNTANCY, July, 1954, page 280.

Konstam's Income Tax. Cumulative Supplement to the Twelfth edition. Pp. 87. (*Stevens & Sons Ltd. and Sweet & Maxwell Ltd.:* 10s. 6d. net.)

Hotels and Restaurants in Great Britain and Ireland, 1958. Thirtieth edition. Pp. xvi+483 and 24 maps. (*The British Hotels and Restaurants Association, 88 Brook Street, London, W.1:* 3s. 6d. net.)

Notices

Mr. F. M. Redington, M.A., has been elected President of the **Institute of Actuaries.**

New Techniques in Retailing is the theme of the fourth annual Retail Management Conference, to be held at Eastbourne from March 18 to 20 by the British Institute of Management. The opening address will be by Mr. Gottlieb Duttweiler, of Switzerland, the well-known pioneer of "cut-price" co-operatives, and a paper on marketing management in the U.S.A. will be given by Professor Samuel C. McMillan, of the University of Connecticut. Other subjects to be considered include training; market research; cutting costs; methods of forecasting demand; financing stocks and developments in a time of dear money; control statistics for top management; and work study for retailers.

An **accountancy carbon paper,** consisting of black carbon paper with two vertical red column strips is manufactured by Ellams Duplicator Co. Ltd. It is in sheets of about 16 in. by 13 in. The red strips can be either 1 in. or 1¼ in. wide, and can extend over the whole length of the paper or can end 2 in. from the top, leaving space for a heading to appear in black. The price is from £3 12s. per 100 sheets, supplied in a special binder.

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Legal Notes

Company Law—
List of Contributories

In ACCOUNTANCY for December, 1957, (page 541) we noted the case of *Re Phoenix Oil and Transport Co. Ltd.* [1957] 3 W.L.R. 633 in which the liquidation was given leave to dispense with the settlement of a list of contributories. As a sequel to this case, in **Re Phoenix Oil & Transport Co. Ltd. (No. 2)** [1958] 2 W.L.R. 126 the liquidator asked either that he might, without further order of the Court, distribute the surplus assets of the company among the contributories in accordance with their respective rights or that he might make a return of capital at the rate of 10s. 2d per £1 of stock held.

Wynn-Parry, J., said that the Court exercised a much greater degree of control in a compulsory winding up than in a voluntary winding up, and that an order of the Court was required before the liquidation could distribute the assets, whether or not any adjustment had to be made among the contributories. His Lordship further said that, as the register of members was now seven years out of date, an inquiry should be made to discover the persons entitled before the Court would authorise a return of capital.

Contract and Tort—
Letters of Credit

Two recent cases were concerned with a contract under which a British company contracted to sell to a Jordanian firm a quantity of reinforced steel rods in two instalments. Payment was to be made by the opening in favour of the sellers of two confirmed letters of credit with a London bank, one for each instalment. The sellers realised the first letter of credit, but the buyers alleged that the goods were seriously defective and sought an injunction to restrain the sellers from realising the second letter of credit. In **Hamzeh Malass & Sons *v.* British Imex Industries Ltd.** [1958] 2 W.L.R. 100 (also reported and discussed in our issue of January, 1958, page 6) the Court of Appeal said that the opening of a confirmed letter of credit constituted a bargain between the banker and the seller of the goods, which imposed upon the banker an absolute obligation to pay, irrespective of any dispute there might be between the parties or whether the goods were up to contract or not. An elaborate commercial system had been built up on the footing that bankers' confirmed credits were of that character and it would be wrong for the Court in the present case to interfere with the established practice. The injunction was therefore refused.

The sellers then presented to the bank all the documents referred to in the letter of credit, but the bank refused to pay on the ground that the bills of lading contained no evidence that an additional clause on the back of the bills had been complied with. In **British Imex Industries Ltd. *v.* Midland Bank Ltd.** [1958] 2 W.L.R. 103, Salmon, J., said that if, as seemed not unlikely, the bank's customers took the point that the bank was not entitled to pay on this credit, it was not surprising that the bank would feel obliged to resist the plaintiffs' claim, so that it should be protected by an order of the Court. The point was whether it was necessary for bills of lading in the form before him to contain an acknowledgment that the printed terms as to marking and securing the goods had been complied with, or whether the bill of lading was acceptable so long as it contained no endorsement or clausing to the effect that the printed clause had not been complied with. His Lordship held that the second alternative was correct and that the bank must pay.

Contract and Tort—
Damages under Fatal Accidents Acts

In actions brought under the Fatal Accidents Acts on behalf of dependants the measure of damages is the pecuniary loss suffered as a result of the death of the breadwinner. Generally any pecuniary benefit accruing to the dependants as a result of the death must be taken into account in reduction of damages, but to this general rule there are certain statutory exceptions and, in particular, by Section 1 of the Fatal Accident (Damages) Act, 1908, "there shall not by Section 1 of the Fatal Accidents payable on the death of the deceased under any contract of assurance or insurance."

In **O'Neill *v.* S. J. Smith & Co. (Bidford) Ltd.** [1957] 1 W.L.R. 1204, under a pension scheme established by virtue of the Coal Industry Nationalisation (Superannuation) Regulations, 1950, the widow of a miner became entitled to weekly benefits upon his death and the question arose whether the capitalised value of those benefits should be deducted from her damages. Hallett, J., held that the value should be deducted because the benefits did not come within Section 1 of the 1908 Act for two reasons: (*a*) on a true construction of the pension scheme there was no contract of insurance or assurance; (*b*) "any sum paid or payable on the death of the deceased" meant a sum paid or payable at the time of the death and not merely as a result of the death; that is, the Section applies only to lump-sum payments and not to periodical payments.

Contract and Tort—
Application to Stay Action in England

In **The Fehmarn** [1958] 1 W.L.R. 159, an English company which was the holder of a bill of lading started an action in England against German shipowners, alleging that a cargo of turpentine, the subject of the bill of lading, had been contaminated. The turpentine had been shipped from Russia and it was a condition of the bill of lading that all claims and disputes arising under and in connection with the bill should be judged in Russia. The shipowners moved to stay the proceedings.

The Court of Appeal said that it was a well established principle that, where there is a term in a contract providing for the reference of disputes to a foreign tribunal, *prima facie* an English court will stay proceedings instituted in this country. But a stipulation that all disputes should be judged by the tribunals of a particular country is not absolutely binding: no one by his private stipulation can oust the English courts of their jurisdiction in a matter that properly belongs to them. In this case most of the evidence was likely to be provided either by witnesses from London or from the ship, which was a frequent visitor to London; the Russian element in the dispute was comparatively small. In these circumstances it was right that the proceedings should be continued in England.

It should be noted that the Court was here concerned with a contractual term providing for the reference of disputes to foreign tribunals and not with an arbitration clause.

Contract and Tort—
Accident Caused by Defective Grating in Highway

In **Macfarlane *v.* Gwalter** [1958] 2 W.L.R. 268, a girl walking along the highway stepped on a defective grating and suffered injury as a result. The purpose of the grating was to give light to the cellar window of G.'s premises, and its defective condition was known to

G.'s servant before the accident. G. conceded that he would be liable to pay damages to the girl if the grating formed part of his premises, but he argued that the grating was part of the highway. The Court of Appeal held that G. was liable even if the grating did form part of the highway. Under Section 35 (1) of the Public Health Acts Amendment Act, 1890, G. had a duty to keep the grating in repair, and as he had failed to do so the grating became a nuisance on the highway; the girl was injured as a result of that nuisance and was entitled to recover damages.

Executorship Law and Trusts—
Statutory Power of Advancement

A. had a life interest in his father's residuary estate and his son, B., was contingently entitled to the capital if he survived A.: if not, the estate went to B.'s children in equal shares. The trustees of the will proposed with A.'s consent to advance a substantial part of the capital to B. and, as the will itself did not confer any power of advancement, they asked the Court whether they could lawfully make this advance under Section 32 of the Trustee Act, 1925, and whether, if they did so, A.'s life interest would be forfeited. Their evidence was that, although B. did not at present require the amount for any specific purpose, he was a responsible person who could be trusted to deal with the money in the best interests of himself and his family, and it was possible that a substantial saving of death duties would result.

Section 32 of the Trustee Act, 1925, provides that, subject to certain conditions, trustees may at any time pay or apply any capital money subject to a trust for the advancement or benefit, in such manner as they may in their absolute discretion think fit, of any person entitled, whether absolutely or contingently, to the whole or part of the capital.

In **Re Moxon's Will Trusts** [1958] 1 W.L.R. 165, Danckwerts, J., said that the word "benefit" in this Section was very wide and included a payment direct to the beneficiary. The trustees must satisfy themselves that the payment in the particular manner which they contemplated was for the benefit of the beneficiary, and if they were so satisfied, then, with the consent of the life tenant, they could lawfully make the payment.

His Lordship also held that the exercise of the power would not cause a forfeiture of the life interest.

Miscellaneous—
Conflict of Laws

In our issue for January, 1958 (page 5) we published a Professional Note on the Greek Bond case, in which the House of Lords upheld the Court of Appeal in allowing a bondholder's claim against the appellant bank for arrears of interest for six years. The case has now been reported as **National Bank of Greece and Athens S.A. *v.* Metliss** [1957] 3 W.L.R. 1056.

The Student's Columns

SOME INCOME TAX TERMS

IN THE STUDY of any subject it is well to be sure of the meaning of the words used. In no subject is the injunction more valid than it is in taxation. In this article we deal with terms in everyday use.

Assessment

"To assess" means (*a*) to estimate the value (of property or income) for taxation; (*b*) to fix the amount of a tax; and (*c*) to put a tax on a person or property. The assessment is the measure arrived at by the appropriate assessing body, usually the General Commissioners or the Special Commissioners or the Inspector of Taxes, according to the source of the income. A notice of the assessment is served on the tax-payer; this usually at the same time shows the amount of tax demanded and is accompanied by a "pay slip," which should be sent with the taxpayer's remittance when the tax is due.

Standard Rate

This is the rate of tax fixed for the year of assessment (the year ending on April 5). An individual is charged at lower rates on the first £360 of his taxable income. The present scale is:

Taxable Income		*Rate of Charge in the £*
First £60	..	2s. 3d.
Next £150	..	4s. 9d.
Next £150	..	6s. 9d.
Balance	..	8s. 6d. (being the standard rate.)

Allowances

This is the term given to certain deductions that are allowed to be made from income before charging tax, e.g., a repairs allowance is given on property in land and buildings; capital allowances are given in respect of capital expenditure on industrial buildings, plant and machinery, etc.

The deductions from an individual's income of a fraction of it because it is earned, of the personal, child, dependent relative allowance, etc., are also commonly called allowances although in the text of the Acts they are referred to as reliefs. In official notices and notes the

reliefs other than that given because the income is earned are invariably called allowances.

Reliefs

This term is used in the Acts to describe personal, etc., allowances as noted above. The difference between the reduced rates and the standard rate is referred to as "reduced rate relief" because it relieves the taxpayer of part of the standard rate. Relief is also given for losses incurred in a trade, profession, etc. Where a taxpayer finds he has made an error or mistake in his return of income or other statement to the Revenue, with the result that the assessment is excessive, he may claim relief within six years after the end of the income tax year in which the assessment was made. There are other reliefs, such as that for tax paid overseas on the same profits or income.

Concessions

A concession is a ruling made by the Commissioners of Inland Revenue to ease the situation where the strict application of the Acts is impossible, difficult, inconvenient, unfair or inequitable. The concession gives a juster result. Concessions are few and strictly applied. Those of general application are published. It is sometimes, though very rarely, possible to obtain a concession to meet a particular set of harsh circumstances. Such a concession applies to the case in question and to no other.

Appeal

On receipt of a notice of assessment, the taxpayer has the right to lodge an appeal in writing within the time limit stated in the notice, usually 21 days (28 days for surtax). The notice is sent to the Inspector of Taxes, except in the case of surtax, when it is sent to the Special Commissioners. Unless the dispute is settled by correspondence or interview, the parties will have to argue it out in front of the Commissioners to whom the appeal is referred.

Return

This is the name given to the official form on which the taxpayer has to give details of his income.

PARTNERSHIPS AND COMPANIES COMPARED AND CONTRASTED

THE BASIC DIFFERENCE between partnerships and companies, the difference whence all others flow, is that whereas companies are legal entities separate from their members, partnerships are neither more nor less than the aggregate of the persons who compose them.

In a company all contracts are made for and on behalf of the company itself. In a partnership, contracts are made by and for the partners as individuals. Neither the directors nor the members can incur any personal liability on contracts made by the company, unless the terms of the contract specifically so provide. But partners are personally liable for all the contracts of the firm, to the full extent of their personal fortunes. If a judgment obtained against the firm is unsatisfied execution can be levied against the partners' personal possessions. But if judgment is entered against a company there can be taken to satisfy the debt only the goods of the company. One result is that when a small company takes a lease of premises there is very often a clause that one or more of the directors shall be personally liable to pay the rent if the company fails to do so. It is also common for a director to guarantee the overdraft of a company at a bank. Such provisions are unnecessary if the business is a partnership, since the partners have personal liability in any event.

Even in an unlimited company the position of the members is very different from that of partners in a firm. For actions cannot be brought directly against the members of the unlimited company themselves. Nor can execution be levied against their goods. If such a company cannot pay its debts from its existing resources it must make calls on its members to obtain the necessary money, and should the directors be unwilling to make the calls, the creditors could present a petition to have the company wound up. Then the liquidator would make the calls, and would sue those members unwilling to pay. But he would be suing in the name of the company, as the debt would be due to the company, and not to the creditors directly.

In limited companies the liability of the members is restricted to the amounts unpaid on their shares. The liability of the company, as such, is not limited at all, except by the value of the assets in its hands. Its nominal capital is irrelevant. Thus if a company has a nominal capital of £5,000, assets worth £12,000 and debts of £13,000 the whole of the £12,000 would be applied in discharge of those debts. Once a member has paid the whole amount due on his shares no further calls can be made on him for any reason—even if the company has virtually no assets, so that the creditors will only get 1d. in the £, whilst the member may be a rich man, well able to afford to give them 20s. in the £ from his own pocket.

The reason for this difference in liability lies in the different constitutions of partnerships and companies. A partnership is, by law, restricted to no more than twenty members. In this comparatively small group each

individual member should be able to ensure that the business is run in such a way that his liabilities are kept within reasonable bounds. Indeed, he has the right to do so. Every partner, unless he is a limited partner, has the right to inspect books of the firm at any time and to take part in its management. Even a private company may be a more unwieldy body than a partnership, as it may have from two up to fifty members. A public company, unlike the partnership and the private company, must have a minimum of seven members, whilst its maximum membership is unrestricted. At least one company claims to have well over 200,000 separate shareholders. Obviously, they cannot all have an equal say in the management of the company. Nor would it be practicable to give each and every one of them unrestricted access to the books whenever he wished. All these powers are given to the directors, who may or may not be members. But, even where they are, their rights as members must be regarded as quite separate from their rights as directors. In a firm there is only one class of person concerned—a partner. Unless a special contract diminished the rights of one or more of their number all partners have equal rights. Limited partnerships have certain special rules. Here again, it is important to remember that it is not the liability of the partnership itself which is limited, but merely that of one or more of the partners. There must always be at least one general partner in this type of firm. It can be created only by registration under the 1907 Act.

The only way in which members can have any say in the management of a company is by attending and voting at general meetings of the company. At these meetings the actions of the directors can be called in question—but these meetings, since they are at wide intervals, are only an indirect form of control. Even the directors, whilst acting within the apparent scope of their authority, cannot be made personally liable on the contracts they make for the company. Partners, on the other hand, are fully liable, not only for their own acts, but also for all acts of their colleagues. Every general partner is the agent of all the others, within the scope of the partnership business. In other words, whilst contracting for the firm he acts both as a principal and agent at one and the same time. This extension of liability does not apply to limited partners as they have no right to take part in the business itself. If they did so they would render themselves liable as general partners.

One of the effects of this interdependence is that the relationship among partners is one of the utmost good faith. Clearly, a partner must be able to have the most complete confidence in any person whose actions are able to impose heavy liabilities on him. If one partner finds out that another is not being completely candid about the affairs of the firm he is entitled to terminate the partnership. Similarly, nobody can become a partner without the consent of all the other partners. Nobody can be forced into such a relationship with another person against his will, unless the partnership is implied.

None of the remarks in the preceding paragraph applies to the relationships among directors, between the directors and the members, or among the members themselves. It is the members who elect the directors, with or without the approval of the others. It makes no difference to a member who his fellow-members are, for nothing they can do can involve him in further liability.

In fact, if one of the partners leaves the firm for any reason the partnership comes to an end. This applies even if the remaining partners continue the business. Or even if they do so with a new partner in the place of the one who has retired. The same thing occurs on the death or bankruptcy of any of its members. But none of these events would have any effect at all upon a company. A company has what is called "perpetual succession." Its existence and the title to its assets are unaffected even by a complete change of members. That is one reason why shares are freely transferable, whilst a partner is not allowed to dispose of his share in the firm without consent. The transfer of shares has no effect on the legal existence or identity of even a private company, in which the right to transfer shares must be restricted.

In a company the share capital is of a certain fixed amount. It can be increased only by a resolution of the company. It can be decreased only with the approval of the courts. The courts will ensure that the creditors are not prejudiced by the reduction. For, as mentioned above, the creditors have no rights against anyone save the company itself. A firm may increase or decrease its capital at will, because the rights of the creditors cannot be affected by the move. If the assets of the firm are insufficient the creditors can recover from the partners. Even if a partner withdraws completely from the firm he remains liable for all debts incurred whilst he was still a member. Any private arrangements which he may have made with the remaining or new partners are irrelevant as far as the creditors are concerned. Here is an illustration of the general rule that it is impossible to assign contractual liabilities. The only way in which they can be escaped is by a contract of novation, which is not an assignment. It requires the consent of the creditor himself, and his rights cannot in the slightest be affected by any action or agreement by any other creditor.

The capital of a firm is merely the amount of money that the partners have agreed between themselves as being the amount needed to run the business. But the capital of a company is the total wealth of a separate legal personality. When the company is formed, or when its capital is increased, duty must be paid on the amount of the nominal capital. Furthermore, since a company is an artificial personality, there are restrictions on what it may legally do and not do—the doctrine of *ultra vires*. No company can do things forbidden by the general law, nor can it disregard the terms of the Companies Act. But even within those limits its scope is further reduced by the need to keep within the powers and objects named in its

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Work-in-Progress

On page 145 of this issue, under "Readers' Points and Queries," we give and comment upon a criticism received from a reader on the article on work-in-progress published in these columns last month (page 89).

memorandum of association. There are no such limits on the powers of a partnership. A partnership can sue and be sued on contracts quite unrelated to the partnership agreement, provided they are such that an ordinary individual could have been sued on them. The reason is, again, that a partnership is merely an extension of the individuals comprising it. Their rights as a whole are no less than their rights collectively. But a company cannot sue or be sued in respect of an act that is *ultra vires*. Third parties are taken to have notice of the limits of a company's powers. The doctrine can have no application to a partnership.

A partnership is defined as an association of individuals carrying on business with a view of profit. It is important to remember that the definition does not necessarily mean that it must make a profit. Even if the business is run in such a way that it cannot possibly make a profit it will still be a partnership. Indeed, it is in such circumstances that it is most important that the association shall have the attributes of a partnership. For it is then that it will be most in the interests of the creditors to be able to satisfy their claims not only from the person who made the contract, but from the assets of the firm and the other partners. A company, although it is usually formed for the purpose of profit, need not necessarily be formed for this purpose.

A partnership may be formed by any formal or informal agreement between individuals. The agreement may even be oral, although for practical purposes it is obviously desirable that it should be in writing. The accounts need not be kept in any particular form—nor, indeed, need they be kept at all. Omission to keep accounts is highly undesirable and may have serious consequences if a bankruptcy ensues, but of itself it would not render the partnership unlawful. Nor are there required to be regular meetings of the partners—or any meetings. All these matters are left to the individuals themselves to regulate. But few companies would attract shareholders if there were no obligation upon the directors to hold meetings of the members at regular intervals. So such meetings are required by the Companies Act. The Act also provides that accounts shall be regularly kept, and periodically submitted to the members. For the benefit of members and of the general public these accounts must be audited each year, and certain returns must also be made to the Registrar of Companies.

A company can come into being only by complying with the statutory requirements. But a partnership can be created with no formalities at all. It is a relationship between individuals, and its existence is a matter of law, to be deduced from the facts of the case. Persons may find themselves liable as partners even though they have expressly said in their agreement that they are not liable: such a statement matters only if there are other circumstances making doubtful the situation in regard to their liability.

The Institute of Chartered Accountants
in England and Wales

Meetings of the Council

AT SPECIAL AND ordinary meetings of the Council held on Wednesday, March 5, 1958, at the Hall of the Institute, Moorgate Place, London, E.C.2, there were present: Mr. W. H. Lawson, C.B.E. (President) in the chair, Mr. W. L. Barrows (Vice-President), Mr. H. Garton Ash, O.B.E., M.C., Mr. E. Baldry, Mr. C. Percy Barrowcliff, Mr. T. A. Hamilton Baynes, Mr. J. H. Bell, Mr. H. A. Benson, C.B.E., Mr. J. Blakey, Mr. W. G. Campbell, Mr. P. F. Carpenter, Mr. W. S. Carrington, Mr. D. A. Clarke, Mr. J. Clayton, Mr. C. Croxton-Smith, Mr. W. G. Densem, Mr. W. W. Fea, Sir Harold Gillett, M.C., Mr. J. Godfrey, Mr. P. F. Granger, Mr. L. C. Hawkins, Mr. J. S. Heaton, Mr. D. V. House, Sir Harold Howitt, G.B.E., D.S.O., M.C., Mr. P. D. Irons, Mr. H. O. Johnson, Mr. H. L. Layton, M.S.M., Mr. R. B. Leech, M.B.E., T.D., Mr. R. McNeil, Mr. J. H. Mann, M.B.E., Mr. Bertram Nelson, C.B.E., Mr. W. E. Parker, C.B.E., Mr. C. U. Peat, M.C., Mr. P. V. Roberts, Mr. L. W. Robson, Sir Thomas Robson, M.B.E., Mr. G. F. Saunders, Mr. K. G. Shuttleworth, Mr. C. M. Strachan, O.B.E., Mr. J. E. Talbot, Mr. E. D. Taylor, Mr. G. L. C. Touche, Mr. A. D. Walker, Mr. V. Walton, Mr. M. Wheatley Jones, Mr. E. F. G. Whinney, Mr. J. C. Montgomery Williams, Mr. R. P. Winter, M.C., T.D., with the Secretary and Assistant Secretaries.

Presentation of Prizes

In presenting the following prizes to the undermentioned candidates who were able to attend the meeting of the Council, the President said:

It is a great pleasure once again to present Certificates of Merit and Prizes to those who have had outstanding success in the recent examinations.

As a London member, I am pleased to find London so well represented in these lists. Last time it was the turn of Leeds and Bradford. This time four of the seven Certificates of Merit in the Final examination go to London, and thirteen out of the twenty places in order of merit in the Intermediate examination. On this occasion three ladies are placed in the Intermediate examination list.

Those of you who have been successful in the Intermediate examination still have a formidable hurdle to face in the Final

examination, but your success in the Intermediate examination will enable you to approach it with every confidence. I wish you all the very best of luck.

Those of you who have obtained awards in the Final examination will be starting out on your careers as Chartered Accountants with confidence gained from your considerable academic successes. You will, I am sure, find the next few years a period of great interest and importance in your lives. With your examinations out of the way you will be able to concentrate on gaining practical experience and will be taking greater responsibility. I hope that many of you will aim at making your careers in practice but some of you may wish to go into industry or commerce. For them there can still be a great advantage in continuing for a few years on the practising side, where experience after qualification can be invaluable and may enhance the chances of securing good appointments in industry later on.

I hope that you will all continue to take an interest in the work of the Institute and will avail yourselves of such opportunities as may occur of service to your fellow members by taking part in the work and activities of the District Societies and other Institute organisations. I congratulate you all on your successes and wish you the very best of luck in the future. (*Applause.*)

FINAL

First Certificate of Merit, the Institute Prize and the W. B. Peat Medal and Prize
T. W. D. Vokins (A. Jolly) Hove

Second Certificate of Merit and the Walter Knox Scholarship
S. D. Rathbone (K. H. Fisher) London

Third Certificate of Merit and the Plender Prize for the English Law (Part I) paper
D. Anton (G. E. Jones) London

Fourth Certificate of Merit and the Plender Prize for the General Financial Knowledge, Cost and Management Accounting paper
J. D. Cormie (P. A. Bayliss) London

Fifth Certificate of Merit and the Plender Prize for the Taxation paper
D. J. H. Slater (H. K. Campbell) Bristol

Sixth Certificate of Merit
J. R. Coombe (H. H. Mason) London

Seventh Certificate of Merit
C. D. Parker (G. W. Wood) Battle

William Quilter Prize and the Plender Prize for the Auditing paper
G. Harris (E. J. Rogers) London

Frederick Whinney Prize and the Plender Prize for the Advanced Accounting (Part I) paper
K. A. Sherwood (S. F. Nash) London

INTERMEDIATE

First Certificate of Merit, the Institute Prize, the Stephens Prize, the Frederick Whinney Prize and the Plender Prizes for the Book-keeping and Accounts (Partnership) and Book-keeping and Accounts (Executorship) papers
W. K. Ng (F. S. Young) London

Third Certificate of Merit and the Flight-Lieutenant Dudley Hewitt, D.F.C., Prize
B. V. Carsberg (C. A. Chapman) London

Fourth Certificate of Merit
M. R. T. Willings (E. Caldwell) London

Fifth Certificate of Merit and the Plender Prize for the Taxation and Cost Accounting paper
Miss J. I. Gold (M. Fox) London

Sixth Certificate of Merit
E. G. Levy (D. F. L. Cooke) London

Eighth Certificate of Merit
M. Blackburn (H. Robinson) Norwich

Ninth Certificate of Merit
A. V. Nicholson (P. A. Aldrich) London
Miss P. L. Northam (C. Romer-Lee) London

Thirteenth Certificate of Merit
R. W. Davies (S. A. Common) Newport, Mon.

Fourteenth Certificate of Merit
S. Saleem (C. Romer-Lee) London

Seventeenth Certificate of Merit
T. C. Groocock (A. M. Williams) Swansea

Eighteenth Certificate of Merit
M. Glenn (R. S. Ford) London
J. W. Rose (L. H. Mitchell) London

Twentieth Certificate of Merit
J. A. Miller (W. E. Parker) London

Resignation from Council

The Council received with regret the resignation of Mr. Eric Carpendale Corton, F.C.A., Leicester, of his membership of the Council. Mr. Corton had been a member of the Council since 1952, and was Vice-Chairman of the Articled Clerks' Committee.

Election to Council

Mr. Stanley Dixon, M.A., A.C.A., Birmingham, was elected a member of the Council to fill the vacancy caused by the resignation of Mr. Basil Smallpeice, B.COM., A.C.A., London.

Admissions to Membership under the Scheme of Integration

The Council acceded to applications from 2,592 members of the Society of Incorporated Accountants for admission to membership of the Institute pursuant to the Scheme of Integration referred to in clause 34 of the Supplemental Royal Charter. The total number of members so admitted is now 8,522. A relatively small number of applications now in hand will be dealt with at the Council meeting on April 2, 1958.

Exemption from the Preliminary Examination

Two applications under bye-law 79 for exemption from the Preliminary examination were acceded to.

Exemption from the Intermediate Examination

One application under bye-law 85 (*b*) for exemption from the Intermediate examination was acceded to, and one application was not acceded to.

Intermediate Examination

One application under bye-law 81 for permission to sit an earlier Intermediate examination was acceded to.

Final Examination

Six applications under bye-law 86 for permission to sit an earlier Final examination were acceded to.

Reduction in Period of Service under Articles

Four applications under bye-law 61 for a reduction in the period of service under articles were acceded to.

Articled Clerks Engaging in Other Business

Three applications under bye-law 57 from articled clerks to engage during their service under articles in other business for the sole purpose and to the limited extent specified in their applications were acceded to.

Articled Clerks in Industrial Organisations

Three applications under bye-law 58 (*c*) from articled clerks to spend a period not exceeding six months in an industrial or commercial organisation during service under articles were acceded to.

City of London College

The Council reappointed Mr. P. F. Carpenter, F.C.A., to serve as a representative of the Institute on the Governing Body of the City of London College for a further term of three years to March, 1961.

Publication of Books and Pamphlets, Articles and Letters to the Press by Members

The Council decided that the following statement be published as part of the proceedings of the Council:

(*a*) It is permissible for a member who is the author of a book or pamphlet to state his name and to use the description or designatory letters to which he is entitled as a member of the Institute, but the addition of the name of the author's firm by a practising member, or of the author's firm or company by a member associated with a firm or company which carries on any of the functions of a practising member, would be objectionable and could form the basis of a complaint of discreditable conduct.

(*b*) It is permissible for a member who is the author of an article in or letter or other contribution to the Press to allow his own name to be mentioned or alternatively use as a nom-de-plume the description or designatory letters to which he is entitled as a member of the Institute. The addition (other than in the accountancy journals) of the name of the author's firm by a practising member or of the author's firm or company by a member associated with a firm or company which performs any of the functions of a practising member or the addition by any such member of the description or designatory letters to which he is entitled as a member of the

Institute would be objectionable and could form the basis of a complaint of discreditable conduct.

Associates Commencing to Practise

The Council received notice that the following associates have commenced to practise:

AUSTERBERRY, JOHN; A.C.A., 1947; 80 Shaw Road, Thornham, Rochdale, Lancs.

BRAND, EDWARD WILLMOTT; A.C.A., 1956; (*Pritchard & Co.), 9 Victoria Place, Haverfordwest, and at Milford Haven.

CARTWRIGHT, JOHN MARTIN; A.C.A., 1953; (*F. G. Purkiss, Cartwright & Co.), Barclays Bank Chambers, Grand Parade, Harringay, London, N.4.

CHILCOTT, EDWIN HENRY; A.C.A., 1954; (†Fitzpatrick, Graham & Co.), 95a Chancery Lane, London, W.C.2.

CLAYPOLE WHITE, DOUGLAS ERIC; A.C.A., 1958; (S. 1954); (McPherson, Timmins & Ednie), 15 Goldington Road, Bedford.

COHEN, JOSEF BARUCH; A.C.A., 1957; 21 Garrick Avenue, London, N.W.11.

COLE, LESLIE RONALD, A.C.A., 1956; 37 Benedict Drive, Bedfont, near Feltham, Middlesex.

CORY-WRIGHT, MARK RICHARD GEOFFREY; A.C.A., 1956; (Dixon, Wilson & Co.), 24 Basinghall Street, London, E.C.2.

CROSSE, HORACE HALE; A.C.A., 1956; 147 Whitchurch Lane, Edgware, Middlesex.

DALLEY, VAUGHAN; A.C.A., 1942; (F. Arthur Pitt & Co.) and (Womersley & Tweedale), 14 John Dalton Street, Manchester, 2; also at Bolton (Greenhalgh, Son & Dutton).

DELANEY, PETER FREDERICK; A.C.A., 1952; 24 Wallington Road, Seven Kings, Ilford, Essex.

DIGBY, PETER JAMES; A.C.A., 1953; (G. Grayrigge & Co.), 46 Bedford Row, London, W.C.1.

DOVE, SAMUEL STUART; A.C.A., 1957; (Stuart Dove & Co.), 7 Sherwood Court, Seymour Place, London, W.1.

ECKMAN, MAURICE ISIDORE; A.C.A., 1958; (S. 1955); (Daniel Mahony, Taylor & Co.), 3 Great Winchester Street, London, E.C.2.

EPSTEIN, RAYMOND; A.C.A., 1955; 121 Clissold Crescent, London, N.16.

KEW, (Mrs.) NELLIE LOUISA; A.C.A., 1958; (S. 1956); (de Paula, Turner, Lake & Co.), 17 Coleman Street, London, E.C.2.

LITTLEDALE, CHARLES ROBERT; A.C.A., 1935; Wakeley House, Charing, Ashford, Kent.

MARKE, ROGER TEMLETT; A.C.A., 1950; (T. A. Heal & Co.), Bucklandville, New Road, Bideford, Devon.

MARTIN, GEORGE WILLIAM; A.C.A., 1951; (Godwin & Taylor), 24 Station Road, Redhill, Surrey, and at London.

MOORE, GEORGE WILLIAM LOUIS; A.C.A., 1952; (*Satterthwaite & Pomfret), 187 Stanley Road, Bootle, Liverpool 20.

PARSLOW, FREDERICK CHARLES; A.C.A., 1952; (Godwin & Taylor), 7 Staple Inn, Holborn, London, W.C.1, and at Redhill.

PLATT, DONALD ERNEST; A.C.A., 1938; 8 Sheridan Road, Merton Park, London, S.W.19.

POWDERHAM, GEORGE EDWARD; A.C.A., 1958; (S. 1957); 91 Westpole Avenue, Oakwood, Barnet, Hertfordshire.

PRICE, JOHN VERNON; A.C.A., 1953; (Redman & Roker), 12 Gilbert Road, Swanage, Dorset.

PULLEN, EDWARD JOHN; A.C.A., 1954; (Redman & Roker), 12 Gilbert Road, Swanage, Dorset.

REDMAN, DAVID; A.C.A., 1955; (David Redman & Co.), Brookfield House, 62/64 Brook Street, London, W.1.

ROBERTS, THOMAS BENNETT MOTTRAM; A.C.A., 1958; (S.1933); (Russell & Mason), 139 Temple Chambers, Temple Avenue, London, E.C.4.

SHEETER, LAURENCE; A.C.A., 1952; (L. Sheeter & Co.), 33 Harrowes Meade, Edgware, Middlesex.

SMITH, DAVID LESLIE; A.C.A., 1954; 6 Manor Drive, Harrogate.

STONE, HAROLD IVOR; A.C.A., 1957; (H. I. Stone & Co.), 17 Sonia Gardens, Neasden, London, N.W.10.

TAYLOR, STANLEY; A.C.A., 1958; (S. 1953); District Bank Chambers, Church Street, Lancaster.

TIDSALL, PETER EUGENE, B.COM.; A.C.A., 1954; 44 Melton Avenue, Littleover, Derby.

WHITELEY, FRED AINSWORTH; A.C.A., 1952; 103 Cavendish Road, Hazel Grove, near Stockport.

WILLIAMS, WILLIAM FREDERICK; A.C.A., 1952; (E. A. Radford, Edwards & Co.), P.O. Box 500, 52 Brown Street, Manchester, 2.

WILSON, DAVID SIDNEY; A.C.A., 1958; (S. 1953); (Daniel Mahony, Taylor & Co.), 3 Great Winchester Street, London, E.C.2.

Election to Fellowship

Thirty-six applications from associates for election to fellowship under clause 6 of the Supplemental Charter (bye-law 31) were acceded to.

Admission as Associate

It was resolved:

(*a*) that 471 applicants be admitted as associates under clause 5 of the Supplemental Charter (bye-law 31).

(*b*) that 18 applicants be admitted as associates under clause 9 of the Supplemental Charter (bye-law 36).

Resignations

The Council accepted the resignation from membership of the Institute of:

BENSON, WILLIE, B.SC., A.C.A., Bradford.

Registration of Articles

The Secretary reported the registration of articles of clerkship as follows:

	1958	1957
February	306	164
January to February ..	458	288

Deaths of Members

The Council received with regret the Secretary's report of the deaths of the following members:

BLAND, CHARLES FRANK, D.S.O., A.C.A., Colchester.

BOSLEY, EDWARD, F.C.A., Solihull.

LEIVERS, ABRAHAM ROBERTS, F.C.A., Newark.

MEACOCK, STANLEY ALFRED, F.C.A., Newport, Mon.

MERRY, WILLIAM WILSON, A.C.A., Liverpool

RENDELL, LESLIE FRANCIS, F.C.A., Bristol.

RUCK, VINCENT TURNER, F.C.A., London.

TULL, JOHN EDWARD GREVILLE, A.C.A., Stroud.

WORSFOLD, EDWARD MOWLL, F.C.A., Hampton Hill.

Finding and Decision of the Appeal Committee

Finding and Decision of the Appeal Committee of the Council of the Institute appointed pursuant to Bye Law 108 of the Bye-Laws appended to the Supplemental Royal Charter of December 21, 1948, at a hearing held on February 4, 1958.

The Appeal Committee heard an appeal against the decision of the Disciplinary Committee of the Council of the Institute upon a formal complaint preferred by the Investigation Committee of the Council to the Disciplinary Committee that a Fellow of the Institute had been guilty of an act or default discreditable to a member within the meaning of Clause 21 Sub-Clause (3) of the Supplemental Royal Charter, in that he permitted and/or failed to take proper steps to prevent the attraction of undue publicity to himself in his capacity of a Chartered Accountant and to his firm by permitting and/or failing to take proper steps to prevent the publication in a booklet published by a building society of a photograph of himself with a biographical note in which reference was made to his accountancy practice and to the name of his firm, well knowing that the booklet is distributed to all members of the building society and to others including agents of the society and solicitors and enquirers, so as to render himself liable to exclusion or suspension from membership of the Institute. The Appeal Committee, varying the decision of the Disciplinary Committee, decided that the member be admonished and considered that there existed special circumstances justifying the omission of his name from the publication of the finding and decision.

Firms not marked † or * are composed wholly of members of the Institute.

† Against the name of a firm indicates that the firm, though not wholly composed of members of the Institute, is composed wholly of chartered accountants who are members of one or the other of the three Institutes of chartered accountants in Great Britain and Ireland.

* Against the name of a firm indicates that the firm is not wholly composed of members of one or the other of the three Institutes of chartered accountants in Great Britain and Ireland.

Findings and Decisions of the Disciplinary Committee

Findings and Decisions of the Disciplinary Committee of the Council of the Institute appointed pursuant to bye-law 103 of the bye-laws appended to the supplemental Royal Charter of December 21, 1948, at hearings held on February 5, 1958.

A formal complaint was preferred by the Investigation Committee of the Council of the Institute to the Disciplinary Committee of the Council that an articled clerk, John Trefor Bullen, whilst acting for the partner of his principal in that partner's capacity as Honorary Treasurer of a club, obtained without authority and without payment supplies of goods for his own personal use from a limited company knowing the cost of such goods would be charged to and paid by the said club, so as to render himself liable to be declared unfit to become a member of the Institute. The Committee found that the formal complaint against John Trefor Bullen had been proved and the Committee ordered that John Trefor Bullen of 1 Colville Road, Wallasey, Cheshire, be declared unfit to become a member of the Institute.

A formal complaint was preferred by the Investigation Committee of the Council of the Institute to the Disciplinary Committee of the Council that Ernest William Pugsley, A.C.A., was convicted at Assizes on his own confession upon an indictment charging him as follows: (*a*) conspiring together with a certain person and other persons unknown to defraud His Late Majesty King George VI, Her Majesty Queen Elizabeth II and the Commissioners of Inland Revenue by knowingly making or concurring in making and by knowingly delivering or concurring in delivering to an Inspector of Taxes false statements and false accounts relating to the profits of certain limited companies with the intention of diminishing the income tax payable in respect of such profits and thereby prejudicing the Public Revenue; (*b*) fifteen charges that with intent to defraud and to the prejudice of His Late Majesty King George VI, Her Majesty Queen Elizabeth II and the Commissioners of Inland Revenue, he delivered or caused to be delivered to an Inspector of Taxes balance sheets and profit and loss accounts purporting to show the true profits of certain limited companies which documents were false; (*c*) seven charges of knowingly and wilfully making otherwise than on oath in returns which he was required to make by the Income Tax Act 1918 and the Finance Acts 1927 and 1928 and by all other Public General Acts of Parliament relating to income tax then for the time being in force statements false in a material particular in that in the said returns he declared that the same contained true and accurate returns of all the sources of his income and of the amount derived from each source whereas in fact the said returns contained certain omissions, so as to render himself liable to exclusion or suspension from membership of the Institute. The Committee found that the formal complaint against Ernest William Pugsley, A.C.A., had been proved and the Committee ordered that Ernest William Pugsley, A.C.A., formerly of Colston Chambers, 12 Colston Street, Bristol, be excluded from membership of the Institute.

Liverpool Students' Anniversary

THE SEVENTY-FIFTH anniversary of the Liverpool Chartered Accountant Students' Association was celebrated by a dinner held at the Exchange Hotel, Liverpool, on February 27.

The Chair was taken by the President of the Association, Mr. E. L. Ashton, B.A., F.C.A., and the guests included Mr. W. H. Lawson, C.B.E., B.A., F.C.A. (President of the Institute of Chartered Accountants in England and Wales); Mr. H. Leslie Bowes, C.B.E. (Chairman of the Liverpool Chamber of Commerce); Mr. C. C. Taylor, J.P., F.C.A. (President of the Liverpool Society of Chartered Accountants); Mr. G. Kenneth Cook, F.C.A. (senior past President of the Association); Mr. Joseph Turner, LL.M.; Mr. John Ainsworth, M.B.E., F.S.A.A., Mr. G. F. Saunders, J.P., F.C.A., and Mr. A. D. Walker, J.P., F.C.A. (members of the Council of the Institute); Mr. A. S. MacIver, M.C., B.A. (Secretary of the Institute); Mr. S. Colvin, F.C.A. (Honorary Secretary of the Alan Cookson Prize Committee); Mr. C. J. Lyon (Honorary Secretary, Liverpool Law Students' Association); Mr. C. Pearson, F.C.A., and Mr. G. English, A.C.A. (formerly Chairmen of the Incorporated Accountants' District Society of Liverpool and of its Students' Section).

Mr. H. Leslie Bowes, C.B.E. (Chairman of the Liverpool Chamber of Commerce), proposing the health of the Institute of Chartered Accountants in England and Wales and the Liverpool Chartered Accountant Students' Association, emphasised the importance of specialisation and hard work if a student was to make his mark. He did not believe that we were facing a major recession: our economies were now better geared, and the underdeveloped countries had expanding economies and increasing population. Mr. Bowes was wholehearted in his support of British participation in the European Free Trade Area, and he impressed upon students the importance of an informed opinion upon such a vital conception.

Mr. W. H. Lawson, C.B.E., B.A., F.C.A. (President of the Institute of Chartered Accountants in England and Wales) recalled that at the inaugural meeting of the Association in 1883 Mr. A. W. Chalmers had impressed upon students the importance of a knowledge of languages, clarity in both speech and writing, and the good character and complete integrity which permit a dispassionate and impartial solution to problems. Mr. Lawson emphasised that these qualifications were still just as important today.

Mr. E. L. Ashton, B.A., F.C.A. (President of the Association) also replied. He observed that the original object of the Association was purely educational. More recently social and sporting activities had been added, as they were of great value in assisting the building of character. Mr. Ashton thanked the senior Society for its continued support, and looked forward to the advantages of a membership increased by former students of the Incorporated Accountants' District Society of Liverpool.

Mr. M. G. Lyon (Honorary Secretary of the Association) extended a welcome to all the guests, and expressed appreciation of the valuable support over many years of Mr. Kenneth Cook and Mr. Sidney Colvin. Mr. Cook had been Honorary Secretary in 1899 and President eleven years later, and Mr. Colvin had since 1919 administered the Alan Cookson Price, awarded half-yearly for success in examinations, conduct during articles and service to the Association.

Mr. Turner, replying for the guests, reminisced agreeably on his experiences as a lecturer in law to members, both at Liverpool and at Burton Manor.

District Societies

London

A special general meeting was held on February 18. The rules of the District Society were amended to increase the size of the committee, in order to provide for the co-option, in accordance with the scheme of integration, of members of the Society of Incorporated Accountants. The committee has been increased by seven members—four in practice, one in the service of a practising accountant and two otherwise employed.

At a committee meeting the next day, these additional vacancies were filled by the election of Mr. J. A. Allen, Mr. C. V. Best, Mr. J. W. Cooke, Mr. S. L. Pleasance, Mr. A. C. Simmonds, Mr. H. Gordon Smith and Mr. C. J. F. Wilkinson.

Burnley Branch

THE TENTH ANNUAL meeting of the Burnley Branch Chartered Accountants' Society was held at the Empress Hotel, Burnley, on January 31.

The Secretary reported on the activities of the Branch during the past year. The committee was reappointed *en bloc* with the addition of Mr. E. J. Parkinson, A.C.A. Mr. T. Thornton, F.C.A., of 8 Ormerod Street, Burnley, was reappointed Chairman and Mr. S. Marchbank, A.C.A., of 117 Colne Road, Burnley, Honorary Secretary.

The meeting was followed by a dinner. Mr. W. T. Shackleton, J.P., C.C., proposed the toast of "The Institute of Chartered Accountants in England and Wales," and Mr. James S. Heaton, F.C.A., a member of the Council of the Institute, responded.

Mr. D. S. Smith, F.C.A., proposed the toast of "The Manchester Society of Chartered Accountants and the North Lancashire Branch," and this was acknowledged in speeches by Mr. Wm. Hare, M.A., F.C.A., Chairman of the North Lancashire Branch, and Mr. F. H. Walsh, F.C.A., a past Chairman of the North Lancashire Branch. Mr. R. O. Beeston, M.A., B.SC., Director of Education for the County Borough of Burnley, repled to the toast of "Our Guests," proposed by Mr. T. Thornton, F.C.A., the Chairman of the Branch.

Hull Students

A MOST SUCCESSFUL function was the Hull professional students' eighth annual dance held at the Guildhall, Hull, on February 7. It was run by the Hull Professional Associations Co-ordinating Committee, on which are represented local branches of seven bodies, including the Institute of Chartered Accountants in England and Wales and the Society of Incorporated Accountants. It was attended by over 230 officers, members and students of the seven bodies.

Grimsby and North Lincolnshire Branch

THE ANNUAL REPORT of the Grimsby and North Lincolnshire Branch of the Hull, East Yorkshire and Lincolnshire Society records a membership of fifty-nine in addition to two honorary members (Scottish Institute). All new members of the Institute in 1957 joined the Branch.

Nine evening and luncheon meetings were held during the year. The annual dinner was on November 21.

A golf competition for the Cole Cup was held in June.

A mock interview and a social evening were held jointly with the students. Members have served on the Students' Society Committee.

Members of the Society of Incorporated Accountants have been invited to join the Branch.

Liverpool and Manchester

THE EIGHTEENTH JOINT residential course for articled clerks organised by the Liverpool and Manchester Societies of Chartered Accountants is being held at Burton Manor, Wirral, from March 14 to 21. Courses are provided for both Intermediate and Final students, who should derive considerable benefit in preparation for their examinations and in exchanging ideas with others. Each lecture is followed by discussion in groups.

London Students

A WEEK-END RESIDENTIAL course suitable for articled clerks who have not yet sat for the Intermediate examination is to be held at Pembroke College, Cambridge, from April 10 to 13, under the auspices of the Chartered Accountant Students' Society of London. The accommodation has been fully allocated. Lectures will be given on *The Financing of Business*, by Dr. R. F. Henderson, M.A., PH.D. (University of Cambridge); *The Practice of Accountancy in Industry*, by Mr. F. Clive de Paula, F.C.A., F.C.W.A.; *Practical Auditing*, by Mr. H. O. H. Coulson, F.C.A.; *National Finance*, by Mr. A. M. M. Mitchell (Principal, H.M. Treasury); and *Handling and Recording Statistics*, by Professor R. G. D. Allen, C.B.E., M.A., D.SC.(ECON.), F.B.A. (University of London).

Reading and District Group

A VERY SUCCESSFUL meeting of the Reading and District Group of Chartered Accountants was held in Reading on the evening of February 28, when Mr. H. O. H. Coulson, F.C.A., gave a talk on "Government Accounting and Organisation."

The annual luncheon meeting will take place on Monday, March 24, at the Caversham Bridge Hotel, Reading, at 12.30 p.m. for 1 p.m. Members of the Group are asked to write as soon as possible to the Honorary Secretary, Mr. J. Sewell, 95 Kenilworth Avenue, Reading, for tickets for themselves and their ladies.

Golfing Society—Diamond Jubilee Dinner

THE CHARTERED ACCOUNTANTS' Golfing Society held its Diamond Jubilee Dinner at Tallow Chandlers' Hall in the City of London on February 28. Mr. J. B. Pittman, the President of the Society, presided. There were about sixty members present. Among the guests were: Mr. W. H. Lawson, C.B.E., President of the Institute of Chartered Accountants in England and Wales, and Mr. A. S. MacIver, Secretary of the Institute; Mr. J. St. Clair Harrison, Golf Captain of the Association of Scottish Chartered Accountants in London, and Mr. J. Wood, Honorary Secretary of the Association; Mr. Norman Richards, Q.C., Captain of the Bar Golfing Society, Mr. J. Elson Rees, Match Secretary of the Society and Mr. P. Harris, Honorary Secretary of the Society; Mr. R. H. R. McGill, Captain of the Solicitors' Golfing Society, Mr. F. R. Furber, Match Secretary of the Society and Mr. F. L. Perkins, Honorary Secretary of the Society.

Mr. J. B. Pittman proposed the toasts of the guests in a humorous speech and Mr. Norman Richards, Q.C., replied in similar vein.

Forthcoming Events

Birmingham

March 21.—"The Changing Law of Contract," by Mr. B. Calwell. Students' meeting. Birmingham Chamber of Commerce, 95 New Street, at 6 p.m.

Blackpool

March 28.—Annual dinner of the North Lancashire Branch of the Manchester Society of Chartered Accountants.

March 28.—Students' evening lecture and film show on Hollerith Punch Card Machine Systems.

April 15.—Students' afternoon visit to Chisnall Hall Colliery, Nr. Wigan.

Bournemouth

All meetings take place at the Grand Hotel, Fir Vale Road.

March 18.—"Income Tax—Schedule D Assessments," by Mr. A. W. Miles, F.C.A. Students' meeting followed by students' annual general meeting. At 6 p.m.

March 28.—"Share Valuations and Take-over Bids," by Mr. L. J. Northcott, F.C.A. Students' meeting. At 4.30 p.m.

April 16.—"Executorship—Death Duties and Apportionments" and "The Auditor and Audit of a Limited Company," by Mr. R. Glynne Williams, F.C.A., F.T.I.I. Students' meeting. At 6 p.m.

April 25.—"General Commercial Knowledge," by Mr. P. E. Harris. Students' meeting. At 4.30 p.m.

Bradford

March 19. — "Executorship-Apportionments" and "Consolidated Accounts," by Mr. K. S. Carmichael, A.C.A. Students' meeting. Midland Hotel, at 4.30 p.m. and 6.15 p.m.

March 26.—"Overseas Trade Corporations and the Finance Act, 1957," by Mr. J. E. Talbot, F.C.A. Victoria Hotel, at 6.15 p.m.

March 28.—"Aspects of Schedule D Taxation," by Mr. J. S. Heaton, F.C.A. Students' meeting. Midland Hotel, at 6.15 p.m.

Brighton

March 22.—Students' annual general meeting followed by "Some Practical Points on Goodwill," by Mr. R. J. Carter, B.COM., F.C.A. Joint students' meeting. Technical College Annexe, 7 St. George's Place, at 10.30 a.m.

April 24.—Annual general meeting of South-Eastern Society of Chartered Accountants. Hotel Metropole.

Bristol

All meetings unless otherwise stated take place at Room 28, Bristol University.

March 21.—"Estate Duty Relief," by Mr. A. C. C. Oddie, F.C.A., and "Incomplete Records Questions in the Examination," by Mr. S. V. P. Cornwell, M.C., M.A., F.C.A. Intermediate students' meeting. At 2.30 p.m. and 3.30 p.m.

March 28.—"Share Valuations and Take-over Bids," and "European Free Trade and the Common Market," by Mr. C. R. Curtis, M.SC., PH.D., F.C.I.S. Students' meeting. At 2.30 p.m. and 3.30 p.m.

April 11.—"Elements of Standard Costing" and "Costing Questions in the Examination," and "Auditing Questions in the Examination," by Mr. W. W. Bigg, F.C.A. Intermediate students' meeting. At 2.30 p.m. and 3.30 p.m.

April 18.—"Punched Card Accounting" (also introducing electronic equipment). The British Tabulating Machine Company

Limited (Hollerith Accounting Machines). A film with introductory talk and discussion. Students' meeting. At 2.30 p.m.
April 25.—"Hire Purchase Finance," by Mr. V. A. Errington. Students' meeting. At 2.30 p.m.
April 25.—"Taxation Questions in the Examination," by Mr. H. P. Lawrence, F.C.A. Intermediate students' meeting. At 3.30 p.m.
April 25.—Cocktail party for members and their ladies. Grand Spa Hotel.

Burton

March 15–21.—Joint residential course (Manchester and Liverpool Societies) for articled clerks. Burton Manor.

Cambridge

March 19.—"Economics from an Examinee's Point of View," by Mr. A. R. Ilersic, M.SC.(ECON.), B.COM. Shire Hall, at 7.15 p.m.*
March 19.—"Economics," by Mr. R. Nield, M.A. Students' meeting. Lion Hotel, at 11.30 a.m.
March 19.—"Current Financial Problems (Government Finance, The Credit Squeeze, Interest Rates, etc.)," by Mr. A. R. Ilersic, M.SC.(ECON)., B.COM. Students' meeting. Lion Hotel, at 2.30 p.m.
April 10–13.—London Students' Society residential course. Pembroke College.

Canterbury

March 26.—"Income Tax, Schedule D," "Branch Accounts," "Electrolux Accounts—Apportionments," and "Amalgamation and Reconstructions," by Mr. G. W. Davies, F.C.A., and Mr. P. E. Harris, A.S.A.A. Students' all-day meeting. Slatters, St. Margaret's Street, at 10.30 a.m.

Cardiff

All meetings take place at the South Wales Institute of Engineers, Park Place.
March 21.—"Bankruptcy," by Mr. Chater. Students' meeting. At 2 p.m.
March 22.—"Invalid and Defective Contracts," by Mr. D. Walters. Students' meeting. At 9.30 a.m.
March 28.—"Branch Accounts and Solicitors' Accounts," by Mr. K. S. Carmichael, A.C.A. Students' meeting. At 2 p.m.
March 29.—"Executorship—Estate Duty," by Mr. M. Phillips. Students' meeting. At 9.30 a.m.
April 11.—"Internal Auditing," by Mr. J. A. Chorley. Students' meeting. At 2 p.m.
April 12.—"Sale of Goods," by Mr. D. Walters. Students' meeting. At 9.30 a.m.
April 18.—"Machine Accounting." Film and lecture, by "Hollerith." Students' meeting. At 2 p.m.
April 19.—"Personal Computation and Surtax," by Mr. M. Phillips. Students' meeting. At 9.30 a.m.
April 25.—"Profits Tax," by Mr. P. Spurway. Students' meeting. At 2 p.m.
April 26.—"Partnership Law," by Mr. D. Walters. Students' meeting. At 9.30 a.m.

Chelmsford

March 24.—Inter-Branch Quiz. Students' meeting.
April 10.—Students' whole-day course, by Mr. V. S. Hockley, C.A. Public Library, Room No. 1.

Clacton

March 27.—"Profits Tax," by Mr. J. W. Walkden, F.C.A. Embassy Restaurant, Station Road, at 7 p.m.*

Coventry

All meetings unless otherwise stated will be held at the "Golden Cross," Hay Lane.
March 17.—"Agency and the Sale of Goods," by Mr. R. D. Penfold, LL.B. Students' meeting. At 6 p.m.
March 31.—Brains Trust. Students' meeting. At 6 p.m.
March 31.—Branch annual general meeting. Chace Hotel, London Road, at 12.45 p.m.
April 14.—"Auditing—Depreciation of Assets, and Repairs and Renewals," by Mr. R. Glynne Williams, F.C.A., F.T.I.I. Students' meeting. At 6 p.m.

Derby

March 11.—Derby Branch annual general meeting. Midland Hotel, at 6.15 p.m.

Dorking

April 1.—"General Financial Knowledge," by Mr. V. S. Hockley, B.COM., C.A., A.A.C.C.A. Students' meeting. Bank Chambers, 124 High Street, at 6.30 p.m.

Dublin

All meetings take place at St. Stephen's Green
March 19.—"Liquidations," by Mr. L. D. McGonagle, B.A. Students' meeting. At 6.15 p.m.*
March 25.—"Consolidated Accounts," by Mr. V. S. Hockley, B.COM., C.A., A.A.C.C.A. Students' meeting.*
April 16.—"Economic Problems," by Mr. A. R. Ilersic, M.SC.(ECON.), B.COM. Students' meeting. At 6.15 p.m.*

Eastbourne

March 22.—"Building Society Operations, including Income Tax Arrangements," by Mr. S. Ferguson, C.A. Students' meeting. Civil Defence Hall, Furness Road, at 10 a.m.

Exeter

March 20.—"Auditing," by Mr. W. W. Bigg, F.C.A. Students' meeting. Imperial Hotel, at 2.30 p.m.
April 11–14.—Students' Residential Course Exeter University.

Grimsby

March 17.—Luncheon followed by annual general meeting. Royal Hotel.
April 2.—Students' annual dinner. Royal Hotel.
April 3.—"Simpler Aspects of Consolidated Accounts," by Mr. G. H. Kelsey, F.S.A.A. Students' meeting. Offices of the Chamber of Commerce, 77 Victoria Street, at 7.30 p.m.

Hastings

All meetings unless otherwise stated take place at Chatsworth Hotel, Carlisle Parade.
March 22.—"General Principles of Double Taxation Relief," by Mr. C. H Kohler, F.C.A. Student's meeting. At 10.45 a.m.
March 24.—Visit to *Daily Telegraph* Offices in Fleet Street, London.
March 29.—"Company Liquidations," by Mr. O. Griffiths, M.A., LL.B. Students' meeting. At 10.45 a.m.
April 12.—"Investigations," by Mr. A. R. English, A.C.A. Students' meeting. At 10.15 a.m.
April 19.—"The Audit of a Limited Company," by Mr. R. S. Waldron, F.C.A. Students' meeting. At 10.45 a.m.

Hull

March 28.—Film Show. "Wood meets the Challenge," "Can we be Rich?", "Overseas Trade," "F.A. Cup Final 1954." Students' meeting. Church Institute, Albion Street, at 6.15 p.m.
March 28.—Visit to Marfleet Refining Co. Ltd. with a talk by the Accountant, Mr. R. J. Crane, A.C.A. Students' meeting. At 2.30 p.m.
April 11.—"Some problems of Accounting—Packages, Hire Purchase Transactions and Consignment Accounts," by Mr. J. Hankinson, F.C.A. Students' meeting. Room D, Imperial Hotel, Paragon Street, at 6.15 p.m.
April 24.—"Executorship Law," and "The principles of Profits Tax," by Mr. K. S. Carmichael, A.C.A. Room D, Imperial Hotel, Paragon Street, at 4 p.m. and 6.15 p.m.

Ipswich

March 21.—Annual dinner of East Anglian Society of Chartered Accountants. Great White Horse Hotel, at 7 for 7.30 p.m.

Kingston-upon-Thames

April 14.—South-West London Discussion Group meeting. Kingston Hotel, Wood Street, at 6.45 p.m.

Leeds

March 25.—"Accountancy Machines," by Mr. G. Tattersall Walker. Students' meeting, Hotel Metropole, at 6 p.m.
March 28.—Lunchtime meeting. Great Northern Hotel, at 1 p.m., followed by annual general meeting, at 2.30 p.m.
March 31.—"Real Benefit of Management Accounting Information," by Mr. W. Tudor Davies, A.C.A. Griffin Hotel, Boar Lane.
April 14.—"Company Law," by Mr. J. F. Myers. Students' meeting. Hotel Metropole, at 6 p.m.
April 23. — "Internal Check and the Auditor," and "Miscellaneous Accounts, including Hire Purchase, Royalties and Containers' Accounts," by Mr. K. S. Carmichael, A.C.A. Students' meeting. Hotel Metropole, at 4.15 p.m. and 6 p.m.

Leicester

Unless otherwise stated meetings will be held at Leicester College of Art and Technology, Main Building, The Newarke.
March 18.—Conversazione. Leicestershire Club, Welford Place, at 6.30 p.m.
March 22.—"Trusts and Trustees," by Mr. C. D. Geach, followed by annual general meeting. Students' meeting. At 9.30 a.m.
March 28.—"Group Accounts," by Mr. F. R. Flowers, A.C.A. Students' meeting. Bell Hotel, Humberstone Gate, at 6 p.m.
March 29.—"Finance for Estate Duty," by Mr. E. R. Izod. Final students' meeting. At 10 a.m.
April 12. — "The Elements of Cost Accounts," by Mr. P. W. Garner. Intermediate students' meeting. At 10 a.m.
April 19.—"Relationship between the

* Under the auspices of an Incorporated Accountants' District or Students' Society.

Banker and the Accountant," by Mr. B. G. Millward. Students' meeting. At 10 a.m.
April 26.—"Charges on the Assets of a Company," by Mr. H. N. G. Staunton. Final students' meeting. At 10 a.m.

Liverpool

March 27.—Students' annual general meeting. The Library, at 5 p.m.
April 10.—"Commercial Frauds," by Detective-Inspector Egan. Students' meeting. Library, 5 Fenwick Street, at 5 p.m.

London

March 17.—"Bankruptcy, Liquidation and Receivership," by Mr. A. C. Staples. Students' introductory lecture. Incorporated Accountants' Hall, at 5.15 p.m.
March 17.—Students' visit to Royal Mint.
March 18.—"Taxable Income," by Mr. J. Kennedy Melling, A.C.A., A.T.I.I., F.R.ECON.S. "The Law of Agreements and Damages," by Mr. A. C. Staples. Students' introductory lectures. Incorporated Accountants' Hall, at 5.15 p.m.
March 19.—Association Football. Students match against Guy's Hospital.
March 19.—"This House Supports the Principle of Equal Pay for Women." Students' debate. Council Chamber, Institute of Chartered Accountants in England and Wales, at 5.30 p.m.
March 20.—Central London and City Discussion Groups joint dinner. Williamson's Tavern, Bow Lane, E.C.4., at 6.30 p.m.
March 21.—Students' whole-day course.
March 21.—Mock income tax appeal. Students' meeting, Beaver Hall, at 5.30 p.m.
March 24.—Inter-Branch Quiz Competition. Students' meeting. Incorporated Accountants' Hall, at 5.30 p.m.
March 25.—"Audit Practice and Methods," by Mr. W. K. Wells, B.A., F.C.A. "The Law of Sale of Goods," by Mr. A. C. Staples. Students' introductory lectures. Incorporated Accountants' Hall, at 5.15 p.m.
March 26.—Students' dinner and balloon debate. London Wall Restaurant, E.C.2, at 5.45 p.m.
March 28.—Dinner and dance. Park Lane Hotel, Piccadilly, at 7.30 p.m. All tickets sold.
March 28.—Students' squash match against Putney.
March 31.—Students' visit to Ford Motor Works.
April 2.—Taxation Group meeting. Incorporated Accountants' Hall, at 6 p.m.*
April 4.—Students' squash match against Old Paulines.
April 9.—City Discussion Group. The Cock and Bottle, Laurence Pountney Hill, E.C.4, at 6.15 p.m.
April 9.—Management Group meeting. Incorporated Accountants' Hall, at 6 p.m.*
April 11.—Students' Squash match against Solicitors' Articled Clerks' Society.
April 16.—Central London Discussion Group. The Lamb and Flag, 33 Rose Street, Covent Garden, W.C.2, at 6.30 p.m.
April 21.—Students' visit to Ford Motor Works.
April 21–24.—"The Practical Aspect." Examination candidates' course. Incorporated Accountants' Hall.
April 25.—Students' whole-day course and annual general meeting.

Luton

March 29.—"What do you mean by 'Capital'?" by Mr. R. J. Carter, B.COM., F.C.A. Students' meeting followed by students' annual general meeting. Chamber of Commerce, at 10.15 a.m.*

Lyndhurst

March 21.—Ladies' Night—dinner and dance. Grand Hotel.

Manchester

All meetings, unless otherwise stated, take place at Chartered Accountants' Hall, 46 Fountain Street.
March 17.—"The Fight against Inflation," by Mr. W. Manning Dacey, B.SC.(ECON.), Economic Adviser, Lloyds Bank Limited, London. At 6 p.m.
March 20.—"Making a Will." Mock meeting between Mr. N. C. O'Brien, Solicitor, Mr. D. R. Brooks, B.A.(COM.), A.C.A., and a testator. Students' meeting. At 6 p.m.
March 21–24.—Joint Residential Course for students (Manchester and Liverpool Societies). Hulme Hall, Manchester University.
March 22.—"Company Accounts (I) and (II)," by Mr. N. C. Cox, F.C.A. Intermediate students' lectures. Onward Hall, 207 Deansgate, at 9.30 a.m. and 11 a.m.
March 22.—"Auditing (V) and (VI)," by Mr. T. W. E. Booth, F.C.A. Final students' lectures. At 9.30 a.m. and 11 a.m.
March 27.—Students' visit to Cussons Sons & Co. Ltd., Kersal, to see Powers-Samas Accounting Machine installation. Party limited. Afternoon.

Newcastle upon Tyne

March 20.—"Economics and Financial Knowledge," by Mr. A. R. Ilersic, M.SC. (ECON.), B.COM. Students' meeting. Lecture Theatre, Neville Hall, Westgate Road, at 6 p.m.
March 26.—"The Profits Tax" by Mr. H. A. R. J. Wilson, F.C.A. Students' meeting. Lecture Theatre, Neville Hall, Westgate Road, at 2.15 p.m.
March 27.—"Capital Allowances and Terminal and Other Losses," by Mr. H. A. R. J. Wilson, F.C.A., Students' meeting. Lecture Theatre, Neville Hall, at 2.15 p.m.
March 27.—Students' annual general meeting. Lecture Theatre. Neville Hall, Westgate Road, at 4.30 p.m.
March 28.—Annual general meeting followed by final monthly luncheon. Prince of Wales Suite, County Hotel, at 12 noon.

Norwich

April 14–18.—Students' tuition course. Assembly House, Theatre Street.
April 24.—Annual meeting. Assembly House, Theatre Street, at 4.30 p.m.

Nottingham

March 19.—"Statutory Apportionments" and "Equitable Apportionments," by Mr. H. A. R. J. Wilson, F.C.A. Students' meeting. Elite Cinema, Parliament Street, at 4 p.m.
April 10.—"Further Legal Thoughts Affecting the Professional Man," by Mr. R. D. Penfold, LL.B. Welbeck Hotel, preceded by luncheon at 1 p.m.

Oxford

March 28.—Students' annual general meeting and dinner. Hertford College, New College Lane, at 6.15 p.m.

Plymouth

April 9.—"Mercantile Law," by Mr. S. G. Maurice. Students' meeting. Grand Hotel, at 4 p.m.
April 9.—"Rent Act and Cheque Endorsement," by Mr. S. G. Maurice. Grand Hotel, at 6.15 p.m.

Preston

Unless otherwise stated, meetings will be held at the Reform Club, Chapel Street, at 10 a.m. and 11.15 a.m.
March 22.—"General Commercial Knowledge (III) and (IV)," by Mr. A. E. Morecroft, A.I.B. Intermediate students' lectures.
March 22.—"Bankruptcy Law" and "English Law: Revision," by Mr. J. C. Wood, LL.M. Final students' lectures.
March 29.—"Company Accounts (I) and (II)," by Mr. H. C. Cox, F.C A. Intermediate students' lectures.
March 29.—"Auditing (V) and (VI)," by Mr. T. W. E. Booth, F.C.A. Final students' lectures.
March 31.—Annual meeting of North Lancashire Branch of the Manchester Society of Chartered Accountants. Bull and Royal Hotel, at 6.30 p.m.

Reading

March 24.—Annual luncheon meeting of Reading and District Group. Caversham Bridge Hotel, at 12.30 p.m. for 1 p.m.

Rotherham

March 25.—Luncheon meeting. Crown Hotel, at 12.30 for 1 p.m.

St. Helens

March 27.—Annual meeting and dinner. Fleece Hotel.

Salisbury

April 24.—"Group Accounts," by Mr. P. E. Harris, A.S.A.A. Students' meeting. Windover House, St. Ann Street, at 7 p.m.

Sheffield

March 17.—"European Free Trade and the Common Market," by Rt. Hon. the Lord Riverdale of Sheffield, J.P. Students' meeting by invitation of the Chartered Institute of Secretaries. Grand Hotel, at 6.30 p.m.
March 18.—"Limited Company Assessment under Schedule D," and "Taxation Losses," by Mr. K. S. Carmichael, A.C.A. Students' meetings. Grand Hotel, at 4 p.m. and 5.30 p.m.
March 24.—Meeting with H.M. Inspector of Taxes. Grand Hotel, at 5.30 p.m.
March 28.—Students' visit to the works of the Standard Motor Co. Ltd.

Southampton

March 20.—Students' visit to Leicester Lovell Ltd., Baddesley, to see punched card accounting installation.
April 10.—"Auditing," by Mr. K. S. Carmichael, A.C.A. Students' meeting. Polygon Hotel, at 6.30 p.m.

Stockton

March 25.—"Taxation—Final Examination Problems," by Mr. H. A. R. J. Wilson,

F.C.A. Students' meeting. Black Lion Hotel, at 6 p.m.

April 2.—Annual general meeting (Chartered Students). Black Lion Hotel, at 6 p.m.

Stoke-on-Trent

March 26.—"The Layout and Design of Accounts," by Mr. E. J. Newman, M.A., F.C.A. North Stafford Hotel, at 6 p.m.

Swansea

March 21.—"Financial and Accounting Control of a Large Company," by Mr. R. P. Tovey, A.C.A. Students' meeting. Lovell's Café, St. Helen's Road, at 5.15 p.m.

March 28.—Mock Commissioners' meeting, organised by Mr. G. G. Thomas, PH.D., F.C.A. Students' meeting. Y.M.C.A., at 7 p.m.

March 31.—Students' annual general meeting. Lovell's Café, St. Helen's Road, at 5.15 p.m.

Truro

"Mercantile Law," by Mr. S. G. Maurice. Students' meeting. Mansion House (Board Room), at 4 p.m.

April 10.—"Rent Act and Cheque Endorsement," by Mr. S. G. Maurice. Mansion House (Board Room), at 6.15 p.m.

Waterford

March 27.—"Consolidated Accounts," and "Verification in Auditing," by Mr. V. S. Hockley, B.COM., C.A., A.A.C.C.A. Students' meetings. Offices of Messrs. W. A. Deevy & Co., at 4 p.m. and 8 p.m.*

April 17.—"European Free Trade and the Common Market," by Mr. A. R. Ilersic, M.SC.(ECON.), B.COM. Students' meeting. Municipal Library, at 8 p.m.*

Westcliff-on-Sea

March 20.—"Executorship Accounts," by Mr. F. Waller, A.C.A. Students' meeting. The Queen's Hotel, Hamlet Court Road, at 7.30 p.m.

Wolverhampton

March 19.—"Municipal Finance," by Mr. S. J. Nicklin, F.S.A.A., F.I.M.T.A. Students' meeting. Victoria Hotel, at 6 p.m.

April 2.—"The Present Economic Situation," by Mr. J. H. Richards, B.COM. Students' meeting. Victoria Hotel, at 6 p.m.

April 16.—Students' annual general meeting. Victoria Hotel, at 6 p.m.

Staff Party

THE ANNUAL PARTY of the staff of the Institute was held on March 5. Some seventy-five members of the staff and about the same number of their personal guests were received before dinner at the Tavistock Restaurant, London, W.C.2, by Mr. W. H. Lawson, the President of the Institute, and Mrs. Lawson, and by Mr. W. L. Barrows, the Vice-President, and Mrs. Barrows. After dinner the gathering split up into theatre parties.

Institute Examinations

THE NEXT EXAMINATIONS will be held as follows:

Preliminary—May 13, 14, 15 and 16, 1958.

Intermediate—May 20, 21 and 22, 1958.

Final—May 27, 28, 29 and 30, 1958.

The Preliminary Examination will be held in London and Manchester. Entry fee £4 4s. 0d.

The Intermediate and Final Examinations will be held in London, Birmingham, Leeds, Liverpool and Manchester. The entry fee for the Intermediate examination is £5 5s. 0d. and for the Final Examination £6 6s. 0d.

The prescribed examination entry form, together with the appropriate fee, must be received at the Institute *not later than 35 days* before the commencement of any examination. The *last day* on which an examination entry form can be *received* at the Institute is stated below. *Late entries cannot be accepted.*

Preliminary Examination—last day April 8, 1958.

Intermediate Examination—last day April 15, 1958.

Final Examination—last day April 22, 1958.

Candidates are advised in their own interests to submit their entry forms *as soon as possible*. Entry forms may be obtained from the Secretary of the Institute, Moorgate Place, London, E.C.2.

Society Examinations

THE MAY, 1958, examinations of the Society of Incorporated Accountants (in voluntary liquidation) are being conducted by the English, Scottish and Irish Institutes and will be held on the following dates:

Intermediate—May 14, 15, and 16, 1958.

Final—May 13, 14, 15 and 16, 1958.

The centres will be Belfast, Birmingham, Cardiff, Dublin, Glasgow, Leeds, Liverpool, London, Manchester and Newcastle upon Tyne.

The closing date for the receipt of applications is March 20, and in no circumstances will an application received after that date be accepted.

Application forms for Society candidates seeking membership of the English Institute can now be obtained only from Incorporated Accountants' Hall, Temple Place, Victoria Embankment, London, W.C.2. Those seeking membership of the Scottish or Irish Institute should apply to the secretary of the appropriate Institute for an entry form.

Luncheon by Mr. E. Cassleton Elliott

The luncheon given by Mr. E. Cassleton Elliott, C.B.E., and Mrs. Elliott to members of the Council of the Society of Incorporated Accountants and their wives on January 16 was given at King Charles Suite, Whitehall Court, London, and not, as indicated in the note on page 104 of our last issue, at Incorporated Accountants' Hall.

Personal Notes

Cooper Brothers & Co., Coopers & Lybrand and Treuhandvereinigung A.G., Wirtschaftsprüfungsgesellschaft, of 8 Wöhlerstrasse, Frankfurt am Main, Germany, announce that they have formed the German firm of Coopers & Lybrand G.m.b.H. with offices at Frankfurt am Main, Berlin, Hamburg, Karlsruhe, Cologne, Munich, Pirmasens, Saarbrücken and Stuttgart.

Messrs. Cooper Brothers & Co., South Africa, announce that they have opened an office at Acme Building (P.O. Box 1292), Kaiserstrasse, Windhoek, South-West Africa.

Messrs. Barton, Mayhew & Co. announce that Mr. John E. Campbell, A.C.A., and Mr. Felix H. Cook, A.C.A., have been admitted to partnership in the firm's practice in Portugal.

Mr. Eric Hudson, A.C.A., has commenced practice at Norwich Union House, 17/19 Albert Road, Middlesbrough, under the style of Eric Hudson & Co., Chartered Accountants.

Messrs. Robson, Morrow & Co., London, W.1, announce that they have entered into partnership with Messrs. Edwin V. Nixon & Partners (Australia), under the name of Robson, Morrow, Nixon & Co. The practice will be carried on from 401 Collins Street, Melbourne, 133 Pitt Street, Sydney, 239 Queen Street, Brisbane, 61 Gawler Place, Adelaide, and 8 The Esplanade, Perth.

Obituary

Edward Bosley

WE REGRET TO record that Mr. Edward Bosley, F.C.A., died on February 4, at the age of 86.

Mr. Bosley retired in 1953 after being associated for more than half a century with Messrs. Sharp, Parsons & Co., Chartered Accountants, Birmingham and London. He served his articles with the firm, and became a member of the Institute in 1903. He was admitted to partnership in Messrs. Sharp, Parsons & Co., in 1905 and became senior partner in 1929.

Arthur Mohun White

WE REPORT WITH regret the death on January 17 of Mr. Arthur M. White, F.S.A.A., Newcastle upon Tyne. He was 72 years of age.

Mr. White qualified as an Incorporated Accountant in 1913. After active service in World War I, he was in public practice in Newcastle from 1922 until his death. He was elected to the Committee of the Incorporated Accountants' North of England District Society in 1922, and became Honorary Librarian in 1931: he resigned during World War II when he accepted a commission in the Royal Army Pay Corps.

He held office for many years as organist and choirmaster in churches in Tynemouth and Newcastle, and as assistant in Newcastle Cathedral.

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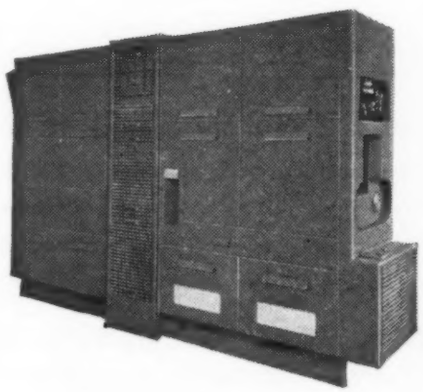

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APPOINTMENTS REGISTER OF THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES

Employers who have vacancies for members on their staffs and also members seeking new appointments are invited to make use of the facilities provided by the Institute's Appointments Register. No fees are payable. All enquiries should be addressed to the Appointments Officer, Moorgate Place, London, E.C.2. Tel. Monarch 8506.

OFFICIAL NOTICES

THE INSTITUTE OF COST AND WORKS ACCOUNTANTS
FELLOWSHIP IN
MANAGEMENT ACCOUNTANCY

The Fellowship Examination is open to Associates of the Institute and to certain other qualified accountants who fulfil the required conditions, particulars of which can be obtained on application.

The examination will take place at the usual home centres on the 2nd, 3rd and 4th June, 1958. Entry forms (obtainable on application) must be lodged with the undersigned by not later than 10th April, 1958.

STANLEY J. D. BERGER
Director

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THE INSTITUTE OF COST AND WORKS ACCOUNTANTS
JUNE 1958 EXAMINATIONS

The next Preliminary, Intermediate, and Final Examinations will be held at the usual Home Centres on the 2nd, 3rd and 4th June, 1958. Applications on Form C (obtainable on receipt of self-addressed and stamped gummed label) should be lodged with the undersigned as soon as possible, and in any case by not later than the 10th April. No late entries will be accepted.

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Applications (three copies), with the names of three referees, should be sent on or before 19th April, 1958, to the REGISTRAR, The University, Birmingham, 15, from whom further particulars can be obtained.

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